

Vol. 774
No. 47



Tuesday
18 October 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Introduction: Baroness Bertin	2221
Questions	
Brexit: Economic Impact	2221
Health: Diabetes	2223
NHS England: HIV Prevention	2226
Hate Crime	2228
Children and Social Work Bill [HL]	
<i>Report (1st Day)</i>	2230
Brexit: Peace and Stability	
<i>Question for Short Debate</i>	2299
Children and Social Work Bill [HL]	
<i>Report (1st Day) (Continued)</i>	2315
Grand Committee	
Misuse of Drugs Act 1971 (Amendment) Order 2016	
<i>Motion to Consider</i>	GC 219
Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016	
<i>Motion to Consider</i>	GC 222
Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016	
<i>Motion to Consider</i>	GC 225
Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016	
<i>Motion to Consider</i>	GC 230
Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016	
<i>Motion to Consider</i>	GC 232

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

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

*This issue of the Official Report is also available on the Internet at
<https://hansard.parliament.uk/lords/2016-10-18>*

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

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

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

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

House of Lords

Tuesday 18 October 2016

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Introduction: Baroness Bertin

2.38 pm

Gabrielle Louise Bertin, having been created Baroness Bertin, of Battersea in the London Borough of Wandsworth, was introduced and took the oath, supported by Lord Strathclyde and Lord Grade of Yarmouth, and signed an undertaking to abide by the Code of Conduct.

Brexit: Economic Impact Question

2.43 pm

Asked by Lord Hannay of Chiswick

To ask Her Majesty's Government whether they stand behind the forecasts for the shortfall in the United Kingdom's economic growth as a result of Brexit set out in *HM Treasury Analysis: The long-term economic impact of EU membership and the alternatives*, published in April.

Lord Young of Cookham (Con): My Lords, as the Chancellor has said, there will be some adjustment and uncertainty in the economy from the referendum decision. The progress and outcome of the negotiations will determine its nature, but we shall be pushing for the best possible deal for the United Kingdom. We are well placed to take advantage of the opportunities from Brexit and, as the Prime Minister has said, there is optimism about the future.

Lord Hannay of Chiswick (CB): My Lords, I thank the noble Lord for that reply, which I categorise as somewhere between equivocal and evasive. I asked him whether the Treasury stood by certain figures. Will he recognise that these figures showed a loss of GDP of 3.8% in the event of our leaving the European Union and having a single market outcome; of 6.2% if we merely had a free trade agreement; and of 7.5% if we fell back on the default option of WTO membership? Those are significant figures with significant gaps between them. Is it not about time that the Government told us a bit more about them and identified the impact on individual sectors of the economy, some of which, allowing for the nature of all averages, will be hurt much more by these changes than others?

Lord Young of Cookham: I thank the noble Lord for prefacing his remarks with his customary diplomacy. It is important to recall exactly what the Treasury analysis did. It took as a baseline continued membership of the EU, and then tried to predict the impact on GDP of three scenarios: first, the Norway solution or EEA; secondly, the Canada option; and thirdly, the WTO option. The Government have subsequently made it

clear that they are going not for any of those three options but for a bespoke option which will not necessarily parallel any of those. For that reason, there is no particular advantage in updating the analysis that the noble Lord referred to. As for what he said about sectors, that is an important issue, and work is going on in government departments on the impact of Brexit on particular sectors of the economy.

Lord Lawson of Blaby (Con): My Lords, I commend my noble friend for dismissing this earlier projection or model. Is he aware that it is regarded as completely useless for two reasons? One is that it takes no account of the other economic dimensions besides trade—there are many—and the other is that it is a so-called gravity model, designed for geographers. All reputable economists regard it as completely useless because it contains, among other things, no prices.

Lord Young of Cookham: I am grateful to my noble friend for his support to the extent that he suggests there would be no great advantage in redoing this exercise. One of the things this exercise did not do was take into account any intervention by the Bank of England or Government after the decision. Since then we have seen monetary initiatives by the Bank of England, and the Chancellor has made it clear that in his Autumn Statement he is minded to take measures to protect the economy. For those reasons, there is no particular advantage in updating the forecast—which was not out of line with other forecasts made at the time.

Lord Davies of Oldham (Lab): My Lords, does it not become apparent that, with yet another wave of the ministerial hand, the Osborne legacy is being swept away and the Government are treading down paths they are unprepared to define? The Minister will have noticed that apart from the noble Lord, Lord Lawson, who can scarcely be defined as an independent voice, the two voices that have been expressed from this House with some force in recent weeks have been those of the noble Lords, Lord Hannay and Lord Kerr, both of whom have a vast amount of insight into the European Community and should be listened to carefully. Can we get one thing from the Government? I know they are prepared to say very little about what is meant to develop over the next few months and years, but can we get from them a commitment to the single market? Are all analysts not absolutely clear that abandoning the single market will be detrimental to livelihoods, to jobs and to public services? Therefore, should the Minister not at least say that the Government are seeking to protect, as far as they can, British membership of the single market?

Lord Young of Cookham: I had hoped to get through this exchange without saying the Government do not provide a running commentary on negotiations. However, the noble Lord has not just asked for a running commentary but asked me to predict the result. The answer is no, I cannot give any of those commitments, apart from the one he asked about at the end. We will of course use our best endeavours to secure access for goods and services from the UK into the European Union.

Baroness Kramer (LD): My Lords, in the 2015 Budget, the Government froze in cash terms most working-age tax credits and benefits. With the rise in inflation that has occurred so far, as reported today, and the very significant rise that is anticipated thanks to the collapse in sterling, will the Government be unfreezing them, so that benefits can increase on the basis of inflation, or are the low-paid to be the first victims of the Brexit decision?

Lord Young of Cookham: I understand the concern that the noble Baroness has expressed about the impact of inflation of those on low incomes, but she would not expect me to say anything that might anticipate what is in the Autumn Statement.

Lord Tebbit (Con): My Lords, what happened to the emergency Budget which the dodgy dossier, to which the noble Lord, Lord Hannay, referred, said would be needed immediately if the electorate were so unwise as to vote for Brexit? What has happened to it? Why has it not been produced?

Lord Young of Cookham: I say to my noble friend that this country has been through a fairly divisive referendum campaign. I do not think it of great advantage to rerun some of the issues that were ventilated. We should do all we can to bring Brexiteers and Remainers together. In a direct answer to his question, the Chancellor and the Prime Minister made it clear that they are no longer seeking a surplus in the government accounts by the end of this Parliament—that target has been postponed. Therefore, some of the imperatives that my noble friend has just referred to are not as essential as they were under the previous Chancellor.

Baroness Symons of Vernham Dean (Lab): My Lords, last week a colleague of mine who sits on the board I chair told me that his company was removing its headquarters from London to Paris as a direct result of the decision to leave the European Union. Can the Minister tell us how many companies have already taken that decision, and whether, on this issue, the Government are at least keeping a running record of those decisions?

Lord Young of Cookham: I do not know how many companies have made that decision. I hope some of them might wait to see the outcome of the negotiations. We have seen significant investment, for example, by SoftBank, which is investing £24 billion in this country through ARM Holdings. We have seen investment by GlaxoSmithKline and we have seen Apple deciding to locate its new offices at Battersea Power Station, so it is not all one way as the noble Baroness has implied.

Health: Diabetes

Question

2.51 pm

Asked by Lord Harrison

To ask Her Majesty's Government what plans they have to extend podiatry care for diabetes.

Baroness Chisholm of Owlpen (Con): My Lords, the *NHS Operational Planning and Contracting Guidance 2017-2019* announced NHS England's intention to

launch a £40 million programme of investment to support the CCGs to improve the treatment and care of people with diabetes. This includes improving access to multidisciplinary foot care teams for people with diabetic foot disease.

Lord Harrison (Lab): My Lords, given the fast-rising numbers of those with diabetes, which now absorbs over 10% of the national health budget—four out of five lower-limb amputations on a daily basis could be preventable—is it not time wisely to invest in podiatric care for diabetics in order to save not only money but the heartache from the loss involved in those lower-limb amputations?

Baroness Chisholm of Owlpen: The Government are absolutely committed to preventing more amputations, but we believe very strongly that money should go towards multidisciplinary teams. These have been seen to be a huge success in various initiatives taken by the likes of King's College Hospital in Sheffield, where multidisciplinary teams were put together. It has been shown that, in Sheffield for instance, there was a 45% reduction in the number of amputees over three years, along with significant financial savings and a 90% patient satisfaction rating. This is the way to go.

Lord St John of Bletso (CB): My Lords, given the high prevalence of type 2 diabetes and the associated inactive lifestyle of patients, what measures can be taken to promote more exercise of these patients?

Baroness Chisholm of Owlpen: The noble Lord is absolutely right: a key issue in dealing with diabetes is education. We have put together several packages. For instance, Public Health England, NHS England and Diabetes UK are working together on Healthier You, which seeks to educate people who might have type 2 diabetes. We are also looking at how we can get to these people in different ways, such as web-based approaches, apps and joined-up thinking. It is sometimes difficult for people to get to clinics, and it might be easier for them to look at digital or the web.

Baroness Young of Old Scone (Lab): My Lords, in the face of investment in diabetes care and the strong priority being given by the Government to multidisciplinary teams for foot care, why can there not be a directive from the Government to ensure that all CCGs commission to that standard? Currently, two out of five patients are not seen within the recommended NICE guidelines on treatment for foot care. Unless local health economies are required to deliver to that standard, I believe that we will continue to see loss of feet as well as a huge increase in costs to the NHS. What are the Government going to do to make this a universal provision?

Baroness Chisholm of Owlpen: As I said, we are encouraging all NHS trusts to take up the multidisciplinary approach. We are disappointed in the take-up, and we think there are several reasons for it. The Department of Health and Diabetes UK are working together on ways to improve the take-up of structured education

and considering more diverse provision in this area. It is also important to remember that a lot of people, when they go to see the doctor, do not say that they have a problem with their feet. We need to educate healthcare professionals to be able to ask the right questions, one of which should be not, "Have you got any problems?", but, "Do you have a problem with your feet?". A lot of people are embarrassed to say that they have a problem, so education could be done on both sides.

Lord Rennard (LD): My Lords, the Minister will be aware of the importance of community pharmacies in supporting people with diabetes in relation to their foot care. Does she accept that the planned significant reduction in the budget to support community pharmacies will force many people who have foot complications to try to go to overcrowded GP surgeries, adding to the problems there? That could mean more long-term complications being treated later in hospital, in the secondary sector. The planned reductions are a completely false economy that should not be made if they are going to force more people to seek treatment other than in their community pharmacy, as at present.

Baroness Chisholm of Owlpen: I think the noble Lord was in the House yesterday when I repeated an Answer to an Urgent Question on this subject. We have to think of the most effective ways to save money in the NHS. We are not suggesting that any pharmacies close, as the noble Lord knows. We are suggesting savings for pharmacies over the next two years. That is not to say that there will be any pharmacies closed, but we need to make them more efficient. There are some places where there are three pharmacies in one high street, which is slightly ridiculous. However, we are ensuring that rural pharmacies will be in place.

Baroness Wheeler (Lab): My Lords, NHS England needs 12,000 podiatry practitioners but has only an estimated 3,000, and that number is declining. Next year podiatry trainees, like nurses, lose the state bursaries that help to contribute towards the cost of training, so fewer are expected to apply. What specific plans do the Government have to ensure that high-risk diabetic patients receive the checks and care needed to avoid serious deterioration in their foot health and possible amputation?

Baroness Chisholm of Owlpen: On the question of training for podiatrists, Health Education England is leading on commissioning a study of recruitment to small and vulnerable professions such as podiatry; the Higher Education Funding Council for England and the College of Podiatry are contributing to the funding of that piece of work. The intention is to make the interventions where necessary to ensure that students are not put off from applying.

On the second part of the question, health checks are indeed very important and we are encouraging as many people as possible to take them up. As I said, there is a problem with some people being willing to take them, and we are looking into how we can improve that.

NHS England: HIV Prevention *Question*

2.59 pm

Asked by Lord Hunt of Kings Heath

To ask Her Majesty's Government whether NHS England is informing patients that lifesaving drugs will be denied them if funding has to be made available for pre-exposure prophylaxis (PrEP) for HIV prevention.

Baroness Chisholm of Owlpen (Con): Clinicians can apply for funding for the drugs in question where there is a clinically exceptional or clinically critical need. Each year NHS England receives many proposals for investment in specialised services. Difficult decisions then have to be made on behalf of taxpayers about how to prioritise the funding available.

Lord Hunt of Kings Heath (Lab): My Lords, I am grateful to the noble Baroness. She will know that evidence from clinical trials shows that PrEP can be highly effective in reducing the spread of HIV when given to those who are at most risk. Quite disgracefully, NHS England has sought to avoid funding responsibilities by saying that it is the responsibility of local authorities, at a time when there have been big cuts in the public health budgets of those councils. Even more disgracefully, government sources appear to have briefed the media that if they were forced to fund PrEP, treatments for serious conditions would have to be stopped, including treatments for children with cystic fibrosis. This was deeply unpleasant, caused great offence and may well have added to the stigma faced by many living with HIV. Will the Government assure the House that this will not happen again, and instruct NHS England to fund the drug forthwith?

Baroness Chisholm of Owlpen: The decision on which drugs to prioritise and how it should happen should surely be made by clinicians and NHS England, and not by politicians. As with all new drugs, PrEP needs to be properly assessed in relation to cost and effectiveness to see how it could be commissioned in the most sustainable and integrated way, and how it compares with other cost-effective approaches.

Baroness Walmsley (LD): My Lords, if the court's decision on the appeal upholds the original decision of the court, NHS England is clearly responsible for providing PrEP. Will the Minister emphasise to NHS England that it should be considering PrEP as a highly effective preventive measure in the same vein as the highly effective vaccinations of babies?

Baroness Chisholm of Owlpen: Yes, certainly if they lose their appeal, it goes back into the normal commissioning process. Of course we recognise that studies have shown that PrEP has been a success, but we also need to remember that it is a matter of how it is used. There are several ways that we have been tackling HIV until now, and PrEP is only one in a range of activities to tackle it. We need to remember

[BARONESS CHISHOLM OF OWLPEN]

that, for it to work, PrEP needs to be taken daily, and sometimes it is difficult to get this group always to take it daily.

Baroness Masham of Ilton (CB): My Lords, will the Minister give us an assurance that life-saving drugs will not be cut back for people with HIV and other life-threatening conditions?

Baroness Chisholm of Owlpen: As I said earlier, we have difficult decisions to take. It is not up to the Government to decide this. As with all new drugs, these are properly assessed for cost and effectiveness to see how they can be commissioned in the most sustainable and integrated way.

Lord Lexden (Con): Are the Government content to let expensive legal wrangling on this matter continue? Is it not time that the Secretary of State thought of using the powers that he possesses to intervene in this tragic and costly dispute?

Baroness Chisholm of Owlpen: I think that we are about to get a decision on the dispute; in fact, we thought it would be this week. It will probably be by the end of this week or the beginning of next.

Lord Patel (CB): My Lords, this method of preventing HIV is highly effective: one tablet taken a day has a success rate of 99%. The lifetime cost of treating one patient with HIV is more than £300,000. Are we not talking about a false economy here when we could prevent some 300 or more new cases a year and avoid the risk of these high-risk individuals passing on the HIV? This decision has been based on fundamental disputes about who should be funding it and not by the logic of successful treatment.

Baroness Chisholm of Owlpen: Truvada is clinically effective for HIV, as we know, but a number of other issues are also important to consider, including uptake and adherence, sexual behaviour, drug resistance, safety and prioritisation for prophylaxis and cost effectiveness. Clinical trials certainly did find that Truvada reduced the relative risk of acquiring HIV for between 44% and 86% of cases, and the PROUD findings showed the figure was 86%.

The Lord Bishop of Chester: My Lords, the Minister has twice referred to difficult decisions. Are the Government sure that spending about half the proportion of GDP on health that North America spends and significantly less than, say, France or Germany spends will enable us to make the right decisions in the face of these difficult ones?

Baroness Chisholm of Owlpen: I agree with the right reverend Prelate, but it is necessary for these drugs to be properly assessed in relation to cost and effectiveness, as I said. It is not up to government to decide this; it must be done between the clinicians and the NHS.

Baroness McIntosh of Hudnall (Lab): The Minister referred to the difficulty, as she saw it, of getting people who might benefit from PrEP to use it effectively. I am not entirely sure what that has to do with the Question. However, does she not think it more likely that people will make proper and effective use of these drugs if they are available on the NHS, so they do not have to go through a much more complicated and much less well-funded system to get them?

Baroness Chisholm of Owlpen: As I said, it is up to NICE and NHS England to decide whether these drugs can be used. Until we know the result of the NHS appeal, it is difficult for me to comment further.

Hate Crime Question

3.06 pm

Asked by Lord Greaves

To ask Her Majesty's Government what action they propose to take to reduce the incidence of hate crime.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): The new cross-government hate crime action plan published in July sets out a comprehensive programme of action to reduce hate crime. This includes education programmes to prevent hate incidents, measures to improve the police response and recording of hate crime and stronger sentencing guidelines for the judiciary. As part of the action plan, we have committed £2.4 million of funding for security for places of worship which have been targeted by hate crime. We are also sharing £300,000 of funding across communities to tackle hate crime through innovative projects.

Lord Greaves (LD): My Lords, the Home Secretary said in relation to the recent figures that the Government intended to stamp out hate crime. That and the actions referred to by the Minister are very welcome, but does she agree that, while it may be possible to stamp out behaviour, stamping out hatred in people's hearts and minds is more difficult? What is required in addition to these actions is for the Government to take the lead in saying loud and clear that everyone who lives in this country is welcome, that we live in a multicultural, multiracial and increasingly diverse country, that this is not going to change and that it is a good thing.

Baroness Williams of Trafford: I agree with the noble Lord to the extent that stamping out hatred in people's hearts and minds is a bigger issue than just providing a hate crime action plan, but this country is tolerant and welcoming. We have seen that in the past 24 hours with some of those fleeing persecution in other countries coming across and being welcomed to this country. It involves more than just action plans—attitudes and the way that we approach our fellow man or woman in everyday life.

Lord Singh of Wimbledon (CB): My Lords, hate crime is an extreme form of prejudice, and prejudice arises from ignorance. Does the Minister agree that there is a much greater need for religious literacy at all levels of society, including government, where it is not always visible? Does she further agree that another contributory factor to hate crime is the reticence of the British people to talk about religion? Religion, which tells us how to live, move and have our being, should be open to challenge if we want a more cohesive society.

Baroness Williams of Trafford: I agree with the noble Lord, as I often do, that religious literacy in all aspects of society—particularly through the media—is incredibly important and something that schools can promote through PSHE. The Government have made a number of funding streams available in order for people to not only discuss what unites them in terms of their religions but celebrate what is different about them. That celebration is a good thing.

Lord Mackenzie of Framwellgate (Non-Affl): My Lords, does the Minister agree that one action the Government could take to possibly reduce hate crime is to make an early announcement that all those who were lawfully living here before Brexit are allowed to remain?

Baroness Williams of Trafford: I think the Government have made that quite clear: people who live here are quite welcome in this country and we will abide by our obligations, unless other EU states change their position.

Lord Hamilton of Epsom (Con): My Lords, when I was delivering leaflets on behalf of the leave campaign in Barnstaple, I asked a man leaving his house whether he was going to vote leave on Thursday and he said, “No, you racist”. Was that a hate crime?

Baroness Williams of Trafford: My Lords, it most certainly was not because we are all free to express our opinions. It is absolutely right that this country is a country in which we can express our opinions. The line lies where that expression incites people to commit hate crimes.

Lord Kennedy of Southwark (Lab): My Lords, racist and religious instances of abuse jumped 41% in the month after the UK voted to leave the EU. Does the Minister attribute that rise to some of the more unpleasant aspects of the EU debate? What further actions are the Government taking and what are the review mechanisms in place in government to ensure that we have the most effective, tough and up-to-date laws to tackle anti-Semitism, Islamophobia and all other forms of racist and religious abuse?

Baroness Williams of Trafford: The noble Lord is absolutely right: in the post-EU referendum period we did see a spike in hate crimes, particularly those that were racially motivated. I held a number of round tables with people of different religions in Manchester and met the Polish ambassador following the graffiti and hatred directed towards the Polish community in Hammersmith. It was very clear that it was a spike in crime motivated by people who used the EU referendum as an opportunity to vent their hate. I am very pleased

that those figures have now calmed right down to almost normal levels. However, it teaches us a lesson that, in light of events that might cause such feelings, we need to quell them quickly.

Baroness Hussein-Ece (LD): My Lords, as the Minister mentioned, the incidence of race and religious hate crimes has gone up by some 40%. The figure the Home Office released is 5,468 at the end of July. Can she say how many of those incidents have been properly investigated, whether there have been any convictions and whether she has any figures? Until there are convictions and examples are made to show that we will not tolerate hate crime as a society, it will continue. As the Minister is aware, many more people do not report this sort of incident and the figure could well be double the 40% that the Home Office has reported.

Baroness Williams of Trafford: One of the things that we did while I was in my other job in the DCLG was to encourage people to report both anti-Muslim and anti-Semitic hatred through the CST, Tell MAMA and the True Vision website, which encourages people to report hate crimes. Yes, there has been an increase in hate crime, but there has also been an increase in its reporting. In terms of prosecutions for hate crime—I asked that question earlier today because I was genuinely interested in the answer—there have been 15,442 in 2015-16. That is a 4.8% increase on the previous year. There has also been a very depressing 41% increase in disability hate crime. We cannot relax across any of those strands that we are looking at.

Children and Social Work Bill [HL]

Report (1st Day)

3.14 pm

Clause 1: Corporate parenting principles

Amendment 1

Moved by Lord Nash

1: Clause 1, page 1, line 10, after second “the” insert “physical and mental”

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, in Committee, quite rightly, we had a substantive debate about the importance of the mental health of looked-after children and care leavers. The Government share the views of noble Lords about the need to ensure that the mental health and emotional well-being of this vulnerable group of children and young people are given as much consideration as their physical health. As my honourable friend the Minister for Vulnerable Children and Families explained when he met Peers last week, we have reflected on the points raised in Committee. As a result, we have tabled an amendment to Clause 1 to put beyond doubt that promoting the health and well-being of looked-after children and care leavers will mean promoting their mental and physical health.

Lord Ramsbotham (CB): My Lords, I shall speak to Amendment 4. I am very glad that the Government have tabled Amendment 1, which is the burden of much of the intention behind my Amendment 4, although my amendments spell out some of the mental health descriptions, which, under the heading of mental health needs, are not always apparent.

Perhaps I may start with a plea to the Minister that in future, Bills be handled differently from the way in which this one has been. We got extremely short notice of Second Reading immediately after the Queen's Speech and then, immediately before Grand Committee, we were bombarded with documents, papers and briefings. Those of us who have no research or clerical support, for example, have to spend a considerable amount of time perusing those in order to understand what is being said so that we can play our part in the purpose of this House, which is to revise and scrutinise legislation.

We complained about that in Grand Committee but, lo and behold, during the short return between the two recesses we again received a number of briefings and letters, and this past week has been absolutely mad. Ministers gave three government briefings last Wednesday. I am not complaining about that, but I ask Ministers to remember that others have diaries and that it is not always possible to change with the rapidity that is expected. Also, there has again been a deluge of government amendments, government briefings and government papers, which suggests to me two things: first, that the Bill was not properly thought through before it was introduced; and, secondly, bearing in mind what was said in Grand Committee, that no impact assessment of any of the measures was carried out—a complaint we have made several times before. An impact assessment does not just say that you either do it or not. It should consist of an analysis of the outcomes of doing it or not, so that those of us not coming at it from a party-political angle can make judgments based on the facts as they are given.

What has also disturbed me during the passage of the Bill is the number of practitioners, including organisations such as the Association of Directors of Social Services, and others working in children's services, who have tabled amendments and made appeals because they do not feel that they have been consulted, or, if they have, that any of their advice or experience has been listened to. That is really not a healthy basis for important legislation about vulnerable children.

The other thing that has come through strongly—I am very glad that the Government have tabled Amendment 1, because it reinforces the point—is that unfortunately, since the demise of the Social Services Inspectorate, responsibility for children's social care has passed to the Department for Education. Yet when you talk to the people working in the delivery of children's services, you find that most of the problems they face are more to do with health, emotion, behaviour and well-being than education. Indeed, preparing children so that they are in a fit state to be educated—mentally as well as in every other way—occupies a great deal of their attention. I am worried that more emphasis is placed on the educational direction of social work and that there is not a more apparent cross-government approach, working with the health industry in particular.

Amendment 4 is designed to spell out in more detail the conditions that children in care and other vulnerable children present. It is based on a paper published by the British Psychological Society in 1915 called, *Children and Young People with Neuro-Disabilities in the Criminal Justice System*. Unfortunately, we have become used to using the phrase “learning disability”, which carries an understanding of a more serious lack of ability to comprehend than some of the conditions in the amendment. The reasons for this go back to the marvellous paper prepared by Baroness Warnock way back in the 1970s in which she spelled out conditions warranting special educational needs status and therefore special treatment. That list was by no means exhaustive but since her paper there has been a great deal more research, and there is now a great deal more understanding of the various conditions grouped together under the phrase “neurodisability”, such as ADHD, dyslexia, and autism. I am strongly of the belief that all of these conditions—which have now been listed by the British Psychological Society—should be better understood. You need only go and talk to the director of a children's home to find that it is those conditions that give them greatest trouble.

I am very glad that since Grand Committee, there has been a meeting between officials in the Department for Education and the Royal College of Speech and Language Therapists. In Grand Committee, I spelled out the need for the assessment of speech, language and communication difficulties on the grounds that inability to communicate is the scourge of the 21st century and means that too many of our children are unable to communicate with their teachers and therefore engage with education. There is now an assessment programme, carried out, I hope, for all children in this country before the age of two by health visitors who have been trained by speech and language therapists. The aim is to ensure that a plan can be made to introduce treatment that will enable that child to engage with education in five years' time, when they start primary school.

Officials from the department have also spoken with the National Association of Virtual School Heads, which I must admit I had not heard of—I was slightly worried when I saw the word “virtual”, because I thought that either you are a school head or you are not. Apparently, however, the virtual school heads have a very valuable role in this area, as does the expert working group on mental health.

I am glad that the Royal College of Speech and Language Therapists has been brought in. They are the best people to advise on looking after children and to advise the Government on how to ensure that children, and those working with them, have access to the communication services they so badly need, particularly children suffering from neurodisability orders. Therefore, I am seeking in this amendment the Minister's undertaking that, in addition to the bald statement in Amendment 1 about improving access to mental and physical health treatment, he will agree to spell out the conditions that so dominate the lives of those responsible for delivering children's services and ensure that local good practice—which I know his officials are aware of, because it has been listed to them by the Royal College of Speech and Language

Therapists—is turned into national good practice, so that all children can take advantage of what has been done in some parts of the country.

Baroness Tyler of Enfield (LD): My Lords, I will speak to Amendment 8 in my name and indicate my support for Amendments 4 and 5, also in this group. In addition, I warmly welcome Amendment 1, which the Government have tabled in response to discussions in Committee. The addition of mental health to the corporate parenting principles is an important step forward towards ensuring that mental and physical health are treated with equal importance by local authorities when they are making decisions about the services and support available to children in care. The Minister's amendment, therefore, is an important signal of principle—but principles alone will not improve the outcomes for children in care.

My amendment is designed to ensure that we can achieve some practical improvements to the care that children receive. It introduces mechanisms that will ensure that the mental health needs of children entering care are properly assessed and that they have access to specialist support if this is needed. Basically, the amendment has two elements: first, a mental health assessment for children entering care, carried out by a qualified professional; and, secondly, a designated health professional in each local authority who has strategic oversight of the outcomes of the assessments and matches those with the services that are available for children in care to support their needs.

In short, this amendment seeks to establish a mechanism that will identify children's needs early on, refer the children to the right services and ensure that services exist that children in care are able to access—and access easily. This joined-up approach is supported by the Alliance for Children in Care, a coalition of leading children's charities, as well as the Royal College of Nursing, the Royal College of Paediatrics and Child Health, and the Royal College of Psychiatrists.

3.30 pm

I will address briefly some of the concerns about this approach that have been raised by the Government. First, why do we need to assess all children entering care? Many of us here know very well that the vast majority of children entering care do so in the first place for reasons of neglect or abuse, with all the detrimental impact that that has on their emotional health and well-being. We also know that over 40% of children entering care have a mental health condition: indeed, research from the US suggests that nine out of 10 children who have been abused will develop a mental health condition by the age of 18. It is staggering to find that over 70% of children entering residential care have a diagnosable mental condition.

The Government have suggested that offering assessments to every child in care will be an inflexible approach, and indeed a burden on already overstretched local authorities. I am of course mindful of these concerns, but I firmly believe that it is the right course of action. I will be clear: this amendment does not propose that every child entering care is forced into an assessment by a clinical psychologist, but that all children in care should be offered an assessment by a trained professional—be it a counsellor, a trained

mental health nurse or a similarly trained professional—who is able to conduct an assessment that is sensitive to the specific needs of looked-after children. By conducting a fuller assessment, local authorities will be able to more accurately consider the needs of every young person and ensure that they are offered the appropriate support.

Again, I am not suggesting that every child entering care needs some sort of clinical intervention, but children need to live in a supportive and protective environment with the appropriate therapeutic support—be that peer support, group work or counselling—to help promote their emotional well-being. I contend that such an approach would undoubtedly see a reduction in the number of children ricocheting between placements and that placement stability would rise. I would add, in case people think that it will be complicated to draw up a new mental health assessment tool, that a very good one already exists and is used for all young people in contact with the youth justice system, or in the secure estate—and, of course, many children in contact with the justice system have been in care already.

I will talk briefly about the designated professionals, also proposed in this amendment. The proposal is based on a recommendation made by the Education Select Committee's inquiry into the mental health of looked-after children. Designated health professionals would fulfil a similar function to virtual school heads. There have been some encouraging results over the past few years, as I am sure the Minister knows. The underlying principle is that each local authority will have a professional who has oversight of the provision of services and is responsible for ensuring that children in care actually get those services at the time that they need them and that they do not, as so often happens at the moment, fall through the net because of placement instability, which means that they never get to the top of a waiting list. Those professionals would also have a pivotal role in feeding into local transformation plans.

I hope that I have set out the reasons why this amendment is so important. I hope that the Minister agrees that this is a crucial matter and will at least commit to meet me to consider the issues that I have raised between now and Third Reading. Without such an undertaking from the Minister, it is only fair that I signal at this stage that I would wish to test the opinion of the House.

The Earl of Listowel (CB): My Lords, I follow my noble friend Lord Ramsbotham in being most grateful to the Government for bringing forward this Bill; there is much in it that is very welcome. I know that the complexities of parliamentary timetables can mean that Bills get introduced to us with fairly short notice, but there is one clause in the Bill that causes particular concern. Clause 29—formerly Clause 15—has the opportunity to roll back significant child protection legislation from the past. My personal concern is that something as important as that needs more time for consultation.

The document *Putting Children First*, which lays out the basis for this particular proposal, came out in July—so, just as we were looking at this proposed amendment, we were also given the theoretical background to it. We have not had enough information or a long

[THE EARL OF LISTOWEL]

enough time to process this important clause, so I ask the Minister to consider withdrawing the amendment, consulting on it properly and bringing it back at a later date. I know that we have not yet settled a second day on Report, which gives us more time to consider this important issue. I hope that that suggestion is helpful.

I support the noble Baroness, Lady Tyler, on this matter, and declare my interest in mental health assessments for looked-after children and designated mental health professionals for them. I am a trustee of the Brent Centre for Young People, a centre of excellence in the treatment of adolescents with health disorders, including eating disorders and other issues, and of the charitable foundation the Child and Family Practice, which brings together paediatricians, head teachers and psychiatrists to produce assessments of children with complex needs such as autism. I strongly support her amendment and I have added my name to it.

The Minister may be concerned about whether we should assess all children. I have heard people say, “What about young children? They will not necessarily need a mental health assessment”. But research from the Tavistock a few years ago was quite clear that we were overlooking the need to assess the mental health of three and four year-olds; their needs were not being caught or addressed. I have been interested in the work of the Anna Freud Centre for many years. It does admirable work with infants, for example in Holloway Prison and in refuges, working with very young children and providing them with therapy and assistance—so that should not be an obstacle.

I look forward to the Minister’s response. There is such a call on mental health provision at the moment and I am afraid about what will happen if we do not legislate—and obviously we want to legislate sensitively. The mental health of these young people has been ignored for many years. We have prioritised their education but we have not given enough thought to the trauma that they experience before entering care and on entering care—and that trauma is often exacerbated by suffering many different placements in care. I strongly support the noble Baroness’s amendment.

Lord Watson of Invergowrie (Lab): My Lords, I support the amendments in this group, particularly Amendment 4. I am pleased to support the remarks of the noble Lord, Lord Ramsbotham, who stressed the need for screening for the various neurodevelopmental disorders and neurodisability needs listed in the amendment. Many of those arguments were made in Committee with particular reference to communication disorders, and I hope the Minister will find them more persuasive on this occasion.

There are many problems related to getting children an assessment and/or a diagnosis. The social worker needs to be aware of neurodisabilities and the support and training to enable them to develop this understanding. The lack of time to build meaningful relationships with a child and really get to know them is also of concern. Again, I hope the Minister will have something to positive to say on that.

On Amendment 1, the Minister acknowledged the need for parity of esteem between physical and mental health, and of course that is welcome. That being the

case, however, there is surely no reason why he should not accept that his amendment is logically extended by the wording of Amendment 8 in the name of the noble Baroness, Lady Tyler. Looked-after children are among the most vulnerable in our society, often entering care with a history of abuse and neglect. But it is the sad case that once they are in the care system—a system intended to protect them—many continue to be at risk of further abuse. The Children’s Commissioner estimated that between 20% and 35% of children who had been sexually exploited were in care at the time of that exploitation. I am afraid that, all too obviously, there have been several such cases in our newspapers recently.

Knowing and understanding what types of support would benefit children entering care should be a simple step. It should be a basic element of that support that they receive a mental health assessment alongside the physical health assessment that already happens. Not only would that identify children with diagnosable conditions that require clinical interventions, it would allow foster carers, social workers, teachers and other responsible professionals to develop an understanding of how they could foster therapeutic relationships with those children in their care. I echo the recent remarks by the noble Earl, Lord Listowel: in many cases children require mental health assessments prior to entering the formal education system because damage can often be done at that stage that it is very difficult to deal with later. Children cared for in institutional settings have often experienced a high number of foster placements which have subsequently broken down, which can often be a by-product of poor emotional well-being.

It is estimated that almost three-quarters of children in residential care have a clinically diagnosable mental health condition. If a concerted effort had been made to address the mental health needs of those children when they entered care, it is at least possible that they may never have needed to be placed in residential care, which is, after all, a much more expensive option than foster care. That is why a whole raft of professionals working with the mental health needs of looked-after children believe that this help should be offered as early as possible. There is no rational reason for delaying the introduction of these simple measures, which could prevent further trauma being inflicted on these children.

As many noble Lords present will know, we have raised this issue time and again. I was among several noble Lords making the case at each stage in the passage of the Children and Families Act 2014. It was repeated at Second Reading and in Committee on this Bill. I raised it again at the briefing session on the Bill for noble Lords which the Public Health Minister hosted in September. All this was to no avail. Nor has this House been the only source of such pleading. As the noble Baroness, Lady Tyler, said, in April, the Commons Education Select Committee published its report entitled *Mental Health and Well-being of Looked-after Children*. One of its recommendations was that,

“all looked-after children should have a full mental health assessment by a qualified mental health professional. Where required this should be followed by regular assessment of mental health and well-being as part of existing looked-after children reviews”.

The Government considered the Committee's report, rejected most of it, it must be said, and their response on that point was:

"We do not accept the recommendation as it stands".

The response went on to refer to the expert working group for looked-after children that the Government established in May as a possible means of filling this long-established gap in provision for looked-after children. Perhaps there is reason to be optimistic as to that group's recommendations, since it will have as its co-chairs Alison O'Sullivan, the former president of the Association of Directors of Children's Services, and Professor Peter Fonagy, a psychologist and medical researcher. By what I am sure is complete coincidence, both gave evidence to the Education Select Committee's inquiry and both, I understand, indicated their support for children having a full mental health assessment when they enter care. The expert working group also included four people who gave evidence to the Select Committee, plus the person who acted as its adviser, so the crossover is considerable, which I very much hope is all to the good.

It would lack consistency for the Minister today to submit Amendment 1 but then dig in his heels and steadfastly refuse to go further with regard to a full mental health assessment. Simply pointing to the expert group is not satisfactory, because it is not due to report for at least 18 months, which means that the Government will effectively stonewall again when the Bill reaches another place. Even if the expert group recommends a mental health assessment for each child entering care, the Government would then need to accept the recommendation—which, on past practice, requires a leap of faith—and then we would need to await the next suitable Bill as a vehicle to introduce it. So if anything does change, it will be quite some way down the line.

The Minister, his advisers and officials at the DfE should ask themselves how many more children will have their mental health issues undiagnosed because of government foot-dragging on an issue that the professionals are quite clear on. Over the years ahead it will be many thousands and that is not a thought of which anyone associated with the Bill on the government side should be proud.

Lord Warner (CB): My Lords, I support all the amendments in this group, particularly Amendment 8, spoken to so ably by the noble Baroness, Lady Tyler. I shall turn to Amendments 4 and 5, to which I have added my name, in a moment. It is a strange irony that she could find an assessment tool in the youth justice system for these conditions; looked-after children seem to have to work their way into the criminal justice system before they can avail themselves of this tool. If I may say so to the Minister, it might be worth considering getting in there a little earlier with looked-after children and accepting the noble Baroness's amendment.

I strongly support Amendments 4 and 5 in the name of the noble Lord, Lord Ramsbotham. I declare my interest as the grandparent of a child on the autistic spectrum and a staunch supporter of the National Autistic Society. From all my involvement with looked-after children over the years, many of whom then appeared in the youth justice system, where I saw them

again, far too many of these children end up in that system and far too many of them have neurodisabilities or neurodevelopmental disorders. Their problem has often been overlooked for a very long time. These disabilities can be at the heart of their problems in terms of social non-compliance in the school and in the wider community. This leads to their becoming children at risk and in need, as well as often ending up in the youth justice system. The way that they process information and instructions—or, more accurately, fail to do so—is at the heart of many of their problems. Knowing about this is a first step to helping them to manage their condition.

If the state is to take the drastic step of assuming responsibility for these children, the least it can do is to make very sure whether these children have disorders and disabilities about which, on their own, they can do very little and with whose management they need help. The Government should take this issue seriously and include in the Bill a provision of the kind set out in Amendments 4 and 5.

3.45 pm

Baroness Benjamin (LD): My Lords, I support this group of amendments because we all know that while each year, here in England, thousands of children enter the care system, too many who enter it cannot rely on the loving support offered by family and support networks. Many have already experienced terrible traumas in their young lives and we know that without the right support, these traumas can have long-lasting consequences. The challenges that looked-after children face after they leave care are well known, so we have to cater for their needs and find ways to encourage them to aim high by fulfilling their ambitions, inspiring aspirations and laying foundations to help them find ways to achieve happiness and personal fulfilment. That is why I am delighted to support especially the amendment tabled by my noble friend Lady Tyler to ensure that mental health assessments will be provided for all children entering care.

It is essential to ensure that the assessment of need will be translated into practical support because we in the state—the corporate parents—have a moral duty to do so. Too many children are crying out for support, like the child who told the NSPCC:

"I live in a residential unit. Other people in the unit keep bullying me. One of them attacked and injured me. I feel really lonely because I have to stay in my room to avoid them".

They said that it had already upset them so much, "that the staff won't arrange a transfer for me. I don't know who to turn to for help".

Another young person told ChildLine:

"I don't understand why everyone hates me. I feel like nobody wants me anymore and I just want to go to a normal family that loves me".

At the core of the amendment proposed today is the desire to ensure that the emotional and mental health needs of children in care are assessed at the point of entering care, so that their needs will be properly supported through their care placement while at school and through a clinical intervention, if that is what the child needs.

Without a better system of support in place to help the 31,710 children who entered care last year, we know that many of them will struggle to overcome the

[BARONESS BENJAMIN]

legacy of those early experiences. As recent statistics released by the Department for Education showed, 40% of children who left care last year were not in education, employment or training. We must therefore take this opportunity before us today to improve the assessment of the mental health needs of children in care. We will otherwise continue to see children in care struggling to stay afloat with the weight of their past experiences. The Prime Minister has highlighted the need to tackle mental health issues; the earlier that we do so, the better.

Baroness Howe of Idlicote (CB): My Lords, I too begin by thanking the noble Lord, Lord Nash, for his amendment on mental health and the corporate parenting principle. I tabled an amendment on this issue in Committee and I am pleased to see that our concerns are being addressed. Ensuring that the mental and physical health of children in care reaches a point of parity is a welcome amendment. It represents an important statement of principle and I am pleased to see steps being taken towards achieving the ambitions set out in the Government's Future in Mind strategy.

Principles are important, but so too are actions. I should like to use the remainder of my time to speak in support of the amendment tabled by the noble Baroness, Lady Tyler. There are currently more than 70,000 children in care in England—70,000 children who no longer live in their family home and who are reliant on the support of the state for all their needs. We have a duty to care for their physical safety, but we have a fundamental responsibility to care for their emotional well-being as well. It is not enough to remove a child from their family home and hope that this will be enough to change their lives. We must aim higher than this. We must aim to provide them with homes that are far better than the family homes they have just left.

It is vital that we find proactive ways of supporting children in care. The first step in this process is to identify the types of support from which a child in care would benefit most. To do this, we need to introduce mental health assessments for children entering care and throughout their time in the care system. The point at which they enter care is crucial, as other noble Lords have said. If a child's first experiences of life in care are positive—if it becomes a space through which their mental health and emotional needs are attended to—then they will be so much more likely to thrive and have the confidence to take advantage of the opportunities afforded to them. If problems are left unidentified, this can have particularly grave consequences for looked-after children.

The research report, *Achieving Emotional Wellbeing for Looked After Children*, published by the NSPCC last year, highlighted how children are particularly vulnerable when they experience poor emotional well-being while in care. This report illustrated the way in which poor mental health can lead to placement instability which, in turn, leads to a further decline in emotional well-being.

A teenage girl called Emily told the NSPCC about the impact that placement instability was having on her emotional well-being. She said:

"I can't cope any more. I have been in care my whole life and have been pushed around between foster families and adopted

families. I feel so let down, broken hearted and like I don't belong anywhere. No one wants me to be here so maybe I should do them a favour".

What a horrible thought to come from anybody, let alone a child of that age.

Sadly, many children who enter care come from chaotic circumstances. Often they have never known what it was like to live in a safe, stable and secure family home. Entering care should be about giving them this stability but, sadly, this is not the experience of many looked-after children. Having the right support in place to help children make sense of their experiences from before they entered care is crucial. If we can find ways to help them manage their emotions in a safe way, many of the challenging behaviours that often lead to placement breakdown could be avoided. We can, and surely must, do better by these children. This strikes me as an eminently sensible place from which to start.

Lord Judd (Lab): My Lords, I too support very strongly this group of amendments. I am very glad that issues about emotional stability, and that dimension of life, have been stressed in this debate. They were stressed particularly powerfully by the noble Baroness, Lady Benjamin.

I have always thought that structures and systems themselves never achieve anything. They can be very effective in supporting and providing the right context, but what matters are the values, principles and sensitivity of the people working within the system. This again emphasises the importance of the emotional dimension. I was very glad that the noble Baroness, Lady Benjamin, had the strength to be prepared to use the word love again. It is a word we should discuss more often in our considerations of these matters, because the tragedy is that so many of these children have never encountered love. The other terribly important thing is that they should be able to form stable, lasting, enduring relationships. Ideally, such relationships are there in the family. But if you are dependent upon a system, they are not obviously there, and therefore continuity of relationships is terribly important.

I want to make one point which is not in any way to argue against what the noble Lord, Lord Ramsbotham, said so powerfully. We should be careful about exonerating the formal educational system from its responsibilities. It is often in the context of formal education that things begin to be noticed. There therefore needs to be an excellent working relationship between the formal educational system and social services. There should be a natural opportunity for people to share notes and responsibility for how the situation might be resolved. When our approach to education emphasises achievement all the time, I sometimes worry that the community dimension of education is being obscured. What matters is that there are space and resources within the education system to make allowances for children who have special needs. Again, that depends on a close working relationship between social services and the formal educational system. In a comprehensive school near where I live in Cumbria excellent work is done in this area. What I really admire about it is that this has become the concern of the whole staff. All the staff are involved. When children have special needs the staff ask what the school is doing to meet that situation,

provide care, love and relationships within the school and enable other students to take their share of responsibility. We need a very close working relationship between the formal educational system and social services.

Lord Lester of Herne Hill (LD): My Lords, I did not take part in earlier stages of the Bill and it may be that the question I am going to ask was answered earlier, in which case I apologise. I would like the Minister to explain why the Bill contains no statement that, in his opinion, the Bill is compatible with the European Convention on Human Rights. My understanding is that that is what the Human Rights Act requires. It may be that there is a very good technical explanation.

Lord O'Shaughnessy (Con): My Lords, I rise to speak on this group of amendments not least because children's mental health and well-being was the subject of one of my amendments in Committee. I am delighted that noble Lords have brought this issue back to the fore with their amendments, and I am even more pleased that, from Amendment 1, we can see that the Minister listened to those concerns, because the change it proposes makes explicit the importance of the mental health of the vulnerable young people who are the subject of the Bill. This is a significant concession. I congratulate the many noble Lords who have been working hard to achieve it. This is, surely, what those of us who put down amendments in Committee were seeking—for this to be taken seriously and put in the Bill. The Government should be congratulated on making this significant concession.

4 pm

The concession obviates the need for the other amendments in this group, much as I support the impulse and motivation behind them. To give one example, Amendment 8 concerns the duty to promote physical, mental and emotional well-being. The statutory guidance, on the top of page 14, states that health and well-being should encompass emotional, mental and physical health and well-being. Being statutory guidance, this has the power that we want. We now have recognition in the Bill of the importance of mental health.

This is not the end of the story. There is still a huge amount of influencing to be done. It is important to note that the statutory guidance is in draft. There are lots of ways of thinking about how it could be improved. The influencing work will go on. Rather than giving attention to further amendments, we should focus on improving and finalising the statutory guidance.

Baroness Murphy (CB): My Lords, I had not intended to intervene because I have not participated earlier, having been absent from the House for some months. I come in at the middle and it is always irritating when people do. However, I am astonished to discover that there is not a mandatory assessment, as proposed by the noble Baroness, Lady Tyler, when children are going into care. We should not dream of admitting adults into care without a mental health assessment. As a psychiatrist, I am not experienced with children but, knowing the outcomes of looked-after children in the longer term and the likelihood of their developing

problems of all kinds that we do not need to outline, I am astonished that we do not assess mental health as a matter of routine.

The government amendment uses fair words. I allow that it is a nice amendment, but it does not address the practicalities. As the noble Lord, Lord Warner, has said, these children will often have profound delays in all kinds of neurological developments that will have led them to have had many mental health problems leading up to their going into care. I am astonished that mandatory mental health assessment does not already exist, so I strongly support the amendment of the noble Baroness, Lady Tyler. I hope that she takes it as far as she can.

Lord Faulks (Con): Briefly, in response to the point raised by the noble Lord, Lord Lester, he and I were both members of the Joint Committee on Human Rights. He may have seen the third report of the session 2016-17. Paragraph 3, commenting on the Children and Social Work Bill, reads:

"Lord Nash, Parliamentary Under-Secretary of State at the Department for Education, has certified that in his view the provisions of the Bill are compatible with the Convention rights".

Lord Lester of Herne Hill: I am very grateful. I gather that the reason for my mistake is that version that we now have does not have the compatibility statement, but I think that the original version did. I am grateful.

Lord Mackay of Clashfern (Con): My Lords, I wonder how the Government's amendment can be carried out without giving effect to the other amendments in this group. Amendment 1 has the effect of requiring that in carrying out its functions, a local authority must,

"have regard to the need ... to act in the best interests, and promote the physical and mental health and well-being, of those children and young people".

How one could promote their health without knowing what they may need in the way of health I cannot understand. Therefore I assume that these amendments are all covered by the generality of the words in Clause 1(1)(a) as amended.

Lord Nash: My Lords, I start by responding to the point made by the noble Lord, Lord Ramsbotham, about the preparation for the Bill and consultation. The Bill has been very widely consulted on, and impact assessments have been conducted, including a full assessment in respect of children's rights. Ministers and officials meet regularly with representatives of local authorities and the voluntary sector to discuss all aspects of the Bill, and their views are always listened to very carefully. In relation to the provisions on looked-after children and care leavers, we have spoken to the ADCS, the LGA and approximately 20 local authorities on the corporate parenting principles and local offer. Our thinking was also informed by eight meetings of care leavers organised by voluntary sector organisations as we developed Keep on Caring. However, I take the noble Lord's point about, at certain times, the rush of correspondence and the flurry of activity,

[LORD NASH]

for which I apologise. It has not been easy for any of us, and I will take his points back, again, and ensure that they are taken very seriously.

I now turn to the amendment in the name of the noble Baroness, Lady Tyler, which would place a duty on local authorities to promote the mental health of looked-after children and care leavers. I am grateful to the noble Earl, Lord Listowel, to my noble friend Lord O'Shaughnessy, to the noble Lords, Lord Warner, Lord Watson and Lord Judd, to the noble and learned Lord, Lord Mackay of Clashfern, and to the noble Baronesses, Lady Murphy and Lady Benjamin, for their contributions to today's debate.

All mental health-related amendments have been discussed with the co-chairs of the expert group for mental health for looked-after children. One of the co-chairs, Alison O'Sullivan, attended a meeting with some noble Lords in September to present the work plan and ambition for its care pathway project. Assessment, and how children access the right support, will be at the very heart of its work. The next stage of the group's work will see the development of options for a care pathway along with models of care and quality indicators for the mental health of looked-after children. A care pathway is an evidence-based journey that outlines possible treatment options, timescales and the professionals involved in a person's care. It will consider, explicitly, the pros and cons of carrying out a full mental health assessment on entry to care.

The expert group plans to share the evidence base behind the chosen models and the pathway with interested parties, including noble Lords, in the spring. We are committed to acting on the findings of the expert group, and will fully consider all the recommendations it makes, including any recommendations to legislate. Every local authority is already under a duty to safeguard and promote the welfare of the children it looks after. That means not just keeping them safe but considering their emotional well-being. Looked-after children already must regularly receive a comprehensive health assessment by a registered medical professional on entry into care.

Where there is concern about possible mental health or special educational needs issues which require further investigation, local authorities must ensure the appropriate professionals undertake necessary next steps. Access to NHS services is based on the clinical needs of each individual. The current approach of undertaking further specialist assessment where there is an established need allows resources to be targeted appropriately.

Transition between children's and adult mental health services needs to be managed effectively. However, prescribing the age at which a young person leaves CAMHS fails to recognise looked-after children as individuals with varying needs. NHS guidance is clear that the transition must be carefully planned with the young person and should take place at the time which is right for them. Services should, wherever possible, accommodate this flexibility.

Co-operation between local authorities and clinical commissioning groups is vital. That is why CCGs are relevant partners under Section 10 of the Children Act 2004 and must co-operate with local authority arrangements to promote the welfare of children. That includes those looked after and care leavers

in their area. Innovation projects such as No Wrong Door in North Yorkshire show what can be achieved through multiagency team approaches.

There are numerous examples of joint working across local authority and mental health teams: North Tyneside, Kensington and Chelsea, Croydon, Hartlepool, Sheffield and Trafford to name but a few. So what we want to see is already happening, but just not everywhere. Through initiatives like the Innovation Programme, the Government are supporting this work and will be helping the wider sector to learn about what really works in this area. Services are improved through better planning and commissioning. The needs of this vulnerable group should be addressed through local health and well-being boards and the local transformation plans that all CCGs have produced with local authorities, together with other local partners.

I completely agree with the importance to be placed on identifying and responding to the mental health needs of children in care. That is why, as I have said, every looked-after child is subject to regular physical and mental health screenings. Where any potential issues are identified, a more intensive specialist mental health assessment should be pursued. But we must remember that around 50% of looked-after children have a mental health problem; 50% do not require intensive specialist assessment—these assessments should be used where there is cause for further investigation, not indiscriminately. As I say, if the expert group on mental health recommends that we reconsider this position, we will do so, properly considering all its recommendations, including legislation.

The noble Baroness, Lady Tyler, clarified some of her concerns and who she proposes would carry out these assessments, which I personally found extremely helpful. I will commit not only to meet her to discuss this matter, but also to try to ensure that the co-chairs of the expert group are also at that meeting to listen to and discuss her points.

I turn to the amendment from the noble Lord, Lord Ramsbotham, which focuses on the needs of looked-after children and care leavers with neurodevelopmental disorders or neurodisability needs. The ability to communicate in order to access learning and improve life chances is something to which the noble Lord is deeply committed. The Government share that commitment, both to looked-after children and care leavers and those with special educational needs. However, we need to take a proportionate and targeted approach to assessing and meeting needs.

The amendment includes a long list of issues that a proposed mental health assessment should cover, all of which may require a specialist assessment. We do not think that screening all children for every condition on that list is appropriate, with children only being sent for specialist assessment where the earlier general assessment has indicated this is necessary. An assessment framework for looked-after children and young people is already in place to ensure their needs are addressed.

Lord Hunt of Kings Heath: I am grateful to the noble Lord for giving way. I am trying to work out whether he has agreed that the issue about mental health assessment can be brought back on Third Reading.

Lord Nash: Well, I have committed to having a meeting with the noble Baroness, Lady Tyler, and the co-chairs of the expert group, to discuss this further. We believe it would be inappropriate to bring this forward now in advance of the expert group making its findings, but it would be helpful if the noble Baroness spoke to the group about her concerns and its direction of travel, and then we can discuss this issue in more detail.

I was dealing with the issues raised by the noble Lord, Lord Ramsbotham. For looked-after children and young people there is already an assessment framework in place to ensure their needs are addressed. This focuses on the whole child's needs: physical, mental, emotional and behavioural development as well as identity, relationships and social presentation and self-care skills. It draws on expertise from health and education partners and is sufficiently comprehensive to identify children with unmet needs who require further specialist assessment. Where children have or are suspected to have special educational needs or disabilities, social workers should be working with professionals who are experts in addressing those needs and identifying the support needed.

The central approach that underpins the Special Educational Needs and Disability Code of Practice is to use the term "children with learning difficulties". It is a very broad term, to be applied to any child who has difficulty with learning for whatever reason, including neurodisabilities. It is also intended to identify social, emotional and behavioural issues that are hard to screen for because they are context-based and develop over time.

Under Section 20 of the Children and Families Act 2014, a child or young person has special educational needs if he or she has a learning difficulty or disability that calls for special educational provision to be made for him or her. That definition includes any condition that amounts to a neurodisability, such as autism or dyslexia. The statutory guidance for virtual school heads emphasises this and stresses the importance of the social care and SEND professions working together so that referrals can be made in a timely way and the right support put in place. To that end the department has, for example, been working with the Communication Trust, a consortium of over 40 voluntary and community sector organisations active in the field of speech, language and communication, to build on existing resources and programmes to ensure that practitioners are supported, and to suggest new opportunities to meet the needs of children and young people with speech and language difficulties.

4.15 pm

I welcome the emphasis that the noble Lord gives to the speech and communication challenges faced by looked-after children and care leavers. My officials recently met with the Royal College of Speech and Language Therapists, and I want to use this as a platform to encourage greater collaboration between the royal college and the National Association of Virtual School Heads. I commit that we will use guidance and the other tools available to us to disseminate good practice, in order to ensure that all concerned are aware of the importance of speech and communication

needs and prevalent conditions and, as I say, to help to facilitate links between virtual school heads and the Royal College of Speech and Language Therapists. Lastly, I have asked my officials to ensure that the new communications standards being produced by the royal college are disseminated by the Children's Homes Quality Standards website.

Let there be no doubt of our commitment to improving outcomes for looked-after children and care leavers, but I encourage noble Lords to be wary of adding to the already complex landscape of legislation in this field at this time, ahead of the expert group—

Lord Warner: I am sorry to interrupt the Minister's flow, but I am puzzling over what he has just said about the amendments from the noble Lord, Lord Ramsbotham, and whether the thrust of those is going to be included in statutory guidance, particularly covering all the conditions set out in Amendment 5. He seemed to be quite encouraging about this, but perhaps he could clarify whether that will be covered in statutory guidance.

Lord Nash: We will certainly draw attention in the statutory guidance to all these conditions and their importance. We are reluctant to encourage people to assess everyone for all these conditions, if the noble Lord sees what I mean.

Lord Ramsbotham: I thank the Minister for what he has said, but it is not assumed that everyone should be assessed for all these conditions. Rather, they were not recognised in Warnock and have therefore not been recognised as specific conditions in the criteria for special educational needs. It is merely listing them as those that should be included in the SEN description in future.

Lord Nash: I think we can do that. I am happy to discuss this further with the noble Lord but, as I understand it, we are proposing to list them as conditions and draw practitioners' attention to them. As I was saying, I am reluctant to do anything further on this in relation to mental health until the expert group has met, but I invite the noble Baroness, Lady Tyler, to meet that group.

Baroness Walmsley: I am sorry to interrupt the Minister again, but I would like him to clarify what he was saying to my noble friend Lady Tyler. He mentioned that if the expert group says that the gist of what she is recommending should be in place, the Government will be prepared to legislate. Legislative opportunities being so few and far between, can he assure the House that a suitable vehicle, in the form of a Bill, will be available in this Parliament to achieve that, should the expert group make that recommendation?

Lord Nash: I am not authorised to make that assurance or to predict future legislation standing here. However, we have appointed these experts, we know what their direction of travel is and we will listen very carefully to all their recommendations, including on future legislation. Obviously, when I say "future", I mean that if they make recommendations, we would like to get on and legislate, where appropriate, as soon as possible. However, it would be helpful if the noble Baroness, Lady Tyler, had further conversation with the co-chairs.

[LORD NASH]

Lastly, I thank the noble Earl, Lord Listowel, for his comments about Clause 29. Of course, we are not due to consider amendments to that clause today. The Government have tabled several amendments to address points made in Committee, and I encourage noble Lords to give them proper consideration before we have a full discussion of that clause in some weeks' time. I am happy to have further discussions on this with noble Lords in the interim; it would be very helpful to discuss this clause in more detail. I also thank my noble friend Lord Faulks for clarifying the point raised earlier by the noble Lord, Lord Lester. I hope and trust that what I have said—particularly on the amendment on the corporate parenting principle—will reassure the noble Lord, Lord Ramsbotham, and the noble Baroness, Lady Tyler, and persuade them not to move their amendments.

Amendment 1 agreed.

Amendment 2

Moved by The Earl of Listowel

2: Clause 1, page 2, line 6, at end insert—

“() to nurture, protect and maintain relationships with families and carers with whom they have lived previously and with whom they wish to remain in contact.”

The Earl of Listowel: My Lords, Amendment 2 is in my name and that of the noble Lord, Lord Warner. I should apologise briefly for not recognising the importance of government Amendment 1 in the last grouping. I welcome that important amendment to make clear to local authorities their duty to consider both the physical and the mental health of looked-after children. I was grateful for the opportunity to meet with the Minister this morning to discuss my amendments in this part of the Bill.

I welcome the inclusion of the corporate parenting principles in Clause 1. However, I believe that these could be further strengthened by adding a new principle, as my amendment does, to support relationships between children and young people and their families and carers. The Care Inquiry report, *Making not Breaking*, concluded that,

“the relationships with people who care for and about children are the golden thread in children's lives, and that the quality of a child's relationships is the lens through which we should view what we do and plan to do”.

By allowing the child to stay in touch with people whom they feel are important to them, this new principle would support principles (b) and (c) in Clause 1(1), on listening to the views of the child, and principle (f), on the stability of relationships.

Research shows that one-third of children and young people in foster care and care-leavers have been prevented from having contact with a former foster carer. More than half have said that their social worker does not support them in keeping in contact at all. Good-quality relationships impact on social and emotional development, educational achievement and mental health. Children who have secure attachments have better outcomes in all of these areas than those who do not have secure attachments. We need to keep in mind the history of broken relationships that many of these young

people have had: broken relationships with their birth parents and siblings as they enter care; with their schoolmates and teachers as they move placements; and with their social workers, as those change.

The practice of cutting off the relationship between the child and their former foster carer is very damaging, and social work practice needs to recognise this. Amending the corporate parenting principles in this way would provide a strong foundation from which to build this change. I hope that I may pay tribute to the Government for their “staying put” legislation and the forthcoming proposal on “staying close”, with regard to children's homes. I think that the Government have really recognised the importance of the principles that I have just been describing.

I would like to end with the comments of a few young people. One young man said:

“Because... I don't even know! I'd like to, I keep in touch with one of my foster families. But the ones I really want to keep in touch with are not allowed, and I think it is wrong that we can't do so as maintaining a secure relationship with foster families makes the child feel valued and still loved and cared for. I hope in the future that this changes”.

Another young person said:

“I have asked but it wasn't allowed and they want to see me too we had a good bond. It should have happened”.

Finally, another said:

“Foster parents are, or can be, like parents: they are the ones who care for you on a day-to-day basis. The idea that you can live in a home for years and then be expected to move to a new home and never look back is abhorrent”.

I look forward to the Minister's response, and I beg to move.

Lord Mackay of Clashfern: My Lords, I am responsible for Amendment 9 in this group. I had the honour of introducing the Bill that ultimately became the Children Act 1989, and I am glad that it has survived since then. Although it has been subject to improvements as time has gone on, the main structure of that Bill has lasted well. Ever since, I have been concerned about the progress of the care system. I have felt sad when it has been shown to have failed in various ways.

One of the important points made by the noble Lord, Lord Judd, earlier was that a good family promotes very close relationships between the parents and the children. Sadly, those who come into care are normally without that provision, and it is the task of the care system to provide for it, as far as possible. One aspect that has troubled me—and those with more hands-on experience of the system than I—is that when a child is in residential care, the people looking after the child change often, and often suddenly. The result is that it is very difficult for the child to build up a relationship with any particular person who has responsibility for their immediate care. As we heard from the noble Earl, in a foster care relationship a very good relationship is often built up, which should be protected thereafter, as far as possible. That is the purpose of Amendment 2. My amendment is related to that, and it is therefore appropriate that they be dealt with together.

I moved a similar amendment in Committee, but I found the Minister's response somewhat disappointing. I thought he had not quite understood what I was trying to get at—no doubt that was entirely my fault—so I arranged for a meeting with the Bill team to discuss

my amendment, and a very full meeting we had. Incidentally, in relation to what is now Clause 29, I proposed a redrafting which I thought would deal with a good many of the objections raised to it in Committee. I am not sure whether that was brought to the Minister's attention, but in raising it with the Bill team I obviously intended that it should—but that is not for today.

4.30 pm

I had a very satisfactory letter back from the Bill team, and I shall put some of it on record:

“Given that our discussion focused in particular on the need for children in residential care to build relationships with a trusted carer in order to promote their wellbeing, I thought you would also appreciate being sent the link to the Guide to Children's Homes Regulations, including the quality standards”.

Needless to say, I found that extremely useful. It points out that these do not require the registered person of the home to ensure that there will be a relationship with a particular child. The standards do not require a primary carer to be allocated to each child in the home. Practice is for children to be allocated a key worker who will be the primary person responsible for their well-being. I ask that the Government should recognise the importance of that in the legislation. It seems to be the practice.

I have to say that the Minister's account of the practice in relation to people responsible for children—the officer who is supposed to have regard to his or her well-being outside the immediate care home—was important. However, I noticed that Barnardo's report published during the Recess, in August, pointed out that some 97% of children in care do not in fact have such a person. That suggests to me that the Department for Education has possibly not got a full account of what goes on in children's homes.

In any event, I think that this response recognises that the practice is to have a particular carer allocated to the child. If that happens and is consistently carried out, the link is likely to arise that may be of extreme value in the emotional well-being and stability of the child, as it is very difficult if these people change completely every so often without any continuity. That is what I want to achieve and I am glad the noble Lord, Lord Warner, has found it possible to put his name to this amendment.

Lord Warner: My Lords, I shall speak to Amendments 2 and 9, both of which I have added my name to. Based on my own experience, I believe that the amendment of the noble Earl, Lord Listowel, is extremely important. Too often, in the understandable wish to make children safe, we overlook the importance of previous and sometimes current links to children's family and a wider group of people who are important adults in their life. That is even where parts of that family have been highly dysfunctional and may not have always treated them well. There is often still a link with that family which is very important to the child.

These children often wish that their immediate family had treated them better, but they do not necessarily wish to sever all their links to family and the wider world outside of what they experience in care. Very often, there are people in their family and among a wider carer group with whom they have made quite a strong bond and relationship and have a desire to

maintain that contact. I suggest to your Lordships that it is critical to a child's own sense of self-worth that they are not given the impression that they do not matter to this wider family and group of people who have been important in their life. I think it is critical that the Government take seriously the spirit of the amendment proposed by the noble Earl, Lord Listowel, and are willing to incorporate that spirit in some form in appropriate words on the face of the Bill.

I have added my name to Amendment 9, proposed by the noble and learned Lord, Lord Mackay, because I strongly support it. I think he has worked extremely hard trying to persuade the department that there is merit in his approach. I think there is very strong merit. Children in residential care are often the most needy and vulnerable. All too often they have a history of failed placements and a strong sense of being let down by the adult world. They are often used to adults walking away from them or dipping in and out of their lives, rather than building strong relationships with them that last over time.

When they come into residential care and find a key worker or a personal adviser to whom they can relate, it is often very important for their sense of self-worth that the system tries to foster that relationship and assists its continuance, not only while they are in care but when the child leaves residential care and moves to independent living, which is a very difficult thing to carry out. Many of us find it difficult to encourage our own children to move to independent living well into their 20s, so imagine what it is like for a young person leaving care. Maintaining that relationship with a key worker, personal adviser or adult who is connected to the child when they are in care may, in some cases, be the ingredient that determines success or failure as they move into independent living.

This is a massive issue for many of these young people, and I think that the Government would do well to listen to both the noble and learned Lord, Lord Mackay, and the noble Earl, Lord Listowel, and to take seriously their amendments.

Baroness Lister of Burtersett (Lab): My Lords, I want to make one simple point in support of Amendment 2, although it probably relates to Amendment 9 as well. In discussing the previous group of amendments, we talked about the mental and emotional health of children, and the Government's amendment was about the promotion of mental as well as physical health. I cannot think of anything that could do more to undermine the mental health of children than to be torn away from relationships that are really important to them. Therefore, in the interests of making a reality of government Amendment 1, I hope that the Minister will feel able to accept Amendment 2 in the name of the noble Earl, Lord Listowel.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support Amendment 9. Subsection (1) of the new clause proposed in it refers to subsection (2). Clause 1(2)(c) of the Bill refers to,

“persons aged under 25 who are former relevant children within the meaning of”,

the Children Act, and it is that part of the Bill that I wish briefly to address.

[BARONESS BAKEWELL OF HARDINGTON MANDEVILLE]

I agree completely with the noble and learned Lord, Lord Mackay of Clashfern, about the importance of relationships to children and young people. On Thursday last week, I attended a briefing organised by the noble Earl, Lord Listowel, and the Children's Society at which I heard from two care leavers, both of whom spoke very passionately about their experiences. One young lady, who was 18, has now left care. However, she was removed from her foster placement one day after her 18th birthday, which seems unnecessarily hasty and somewhat insensitive. To date, no personal adviser has been appointed for her and she has no one to officially advise her. She made the very valid point that she and others in care really need advice, particularly on their likely financial responsibilities, before they reach 18 and not afterwards, as all money stops at 18. I will return to this aspect of financial advice in later amendments.

It is important that children in local authority care have someone they can turn to at all times. Children not in care have parents and relatives whom they can turn to and confide in. Looked-after children deserve parity with their peers, and I fully support the amendment tabled by the noble and learned Lord, Lord Mackay, and the noble Lord, Lord Warner.

Lord Nash: I am grateful to my noble and learned friend Lord Mackay, the noble Earl, Lord Listowel, and the noble Lord, Lord Warner, for their amendments on promoting stable relationships between looked-after children and care leavers and their families and those who care for them.

I am pleased to reassure the House that local authorities already have robust duties to promote and maintain contact between looked-after children, their families and people significant to the child. There are also staff in local authorities and children's homes with a clear responsibility to promote individual children's well-being and to build strong relationships with them.

Helping young people maintain positive relationships is a vital part of corporate parenting. Doing so will enable local authorities to comply with several principles; for example, those relating to acting in the child's best interests and promoting their health, encouraging children to express their wishes and feelings, and to be safe and have stability in their relationships. Maintaining positive relationships is part of promoting children's best interests and arrangements need to be based on children's needs and wishes. Existing legislation and statutory guidance strongly support this.

The presumption that contact between children and their family should be maintained while a child is being looked after is already set down in paragraph 15 of Schedule 2 to the Children Act 1989. The Act requires local authorities to promote contact with parents, relatives and those connected with the child, provided it is consistent with the child's welfare.

Statutory guidance on care planning, placement and case review is also clear. Children's welfare is the paramount consideration in determining contact and the care plan for a looked-after child must set out the arrangements made for contact with parents, anyone with parental responsibility or any other connected person. The guidance also makes clear that children's

wishes and feelings regarding contact should be taken into consideration. As part of children's case reviews, independent reviewing officers must speak to children before the review meeting to ascertain their views, wishes and feelings. This gives children a chance to express any concerns, including with their contact arrangements, so the review can take these into account.

I agree with noble Lords that looked-after children, including those in residential care, should be supported by professionals who promote their well-being and have clear accountability for this. At local authority level, all looked-after children have an allocated social worker and an IRO who are responsible for their well-being and development.

The noble and learned Lord, Lord Mackay, rightly highlights the need for children in residential care to have a strong relationship with at least one member of the home's staff. I entirely agree with him that an ongoing, trusted and stable relationship is really important for these young people. Although it is not mandatory, it is common practice for homes to appoint a key worker for each child. This is a member of staff who has special responsibility for an individual child. The key worker role complements requirements on all staff to protect and build positive relationships with children. While there is no doubt that staff in this role can be a huge source of support for children, we do not believe that making it compulsory would be the right thing to do. Children's homes have evolved greatly in recent years, both in their size and the approach they take to supporting children, and we strongly believe that they should have flexibility to shape the role and the support they provide to meet children's individual needs and circumstances.

There are many examples of excellent practice, such as North Yorkshire's No Wrong Door project. Here children's wishes and feelings are taken into account by letting them choose their key worker after they get to know their staff. The key worker builds a strong relationship with them and, like a parent, advocates for them where necessary. At No Wrong Door, key workers support young people up to the age of 25, remaining a consistent point of contact as they move to independence.

We recognise that maintaining relationships can be a particular challenge for care leavers. That is why our care leaver strategy, published in July, set out our desire to test new models of support for those leaving care. The Family Finding model, for example, identifies a range of adults, including family members, ex-carers and professionals who have known the young person during their childhood and are prepared to make a lifelong commitment to the young person.

In addition, as the noble Earl, Lord Listowel, mentioned, in response to a recommendation in Sir Martin Narey's review of residential care, we will introduce "staying close", which will provide the benefits of "staying put" for those leaving residential care. "Staying close" will support continuation of the trusted relationship that the young person has developed with staff at their former residential home through to age 21. We are planning to invite local authorities to pilot "staying close" in the first instance, to enable us to better understand the costs and practicalities of providing this support.

While I support the very positive intentions behind the amendments, I believe that the way to address them is by continuing to develop effective practice rather than imposing new requirements on practitioners who need the space and flexibility to work out what is best for the children in their care. Though I have much sympathy for the emphasis noble Lords have given to the importance of stable relationships, I believe that this is something local authorities should be promoting through the local offer.

4.45 pm

Amendment 11, tabled by the noble Lord, Lord Farmer, the noble Baroness, Lady Tyler, and the noble and learned Lord, Lord Mackay, which we will come to later, seeks to add relationships to the services that local authorities may offer as part of the local offer. I am very sympathetic to this and will go away and consider whether such an amendment would be appropriate.

I was also very concerned to hear the figure of 97% mentioned by the noble and learned Lord, Lord Mackay. That is disturbing and is not, I am told, a figure that we recognise. However, I would like to meet him and officials to share our thoughts and figures on this. Obviously, if anything like that figure is true, clearly we should be doing something about it.

Given what I have said, and the existing statutory responsibilities to promote contact and well-being, I hope that the noble Earl will feel reassured enough to withdraw his amendment.

The Earl of Listowel: I thank the Minister for his response. Indeed, I thank noble Lords for their support for my amendment. I should have said that I very much support the noble and learned Lord in his amendment.

I recall a discussion at the All-Party Group for Looked After Children and Care Leavers at which I met a man in his 50s. He told me that his mother was celebrating her 80th birthday and that, as she had run a children's home for many years, generations of children and families who had gone through that home would be celebrating her birthday with her. That does happen: there are really good social workers who keep in touch with their care leavers; there is a broadcaster—a care leaver—who still keeps in touch with his social worker from the past.

It can be difficult, however, to manage that relationship when a young person leaves care. Some professionals and foster carers perhaps do not quite have the confidence and professional ability to manage that as the young person moves on. I hope that the Government's vision to develop the status of social work and make it an attractive and well-supported profession will help to improve those relationships in the longer term. I am grateful to the Minister for his response and beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by Lord Ramsbotham

3: Clause 1, page 2, line 6, at end insert—

“() to promote access to legal advice and representation for children and young people, including independent advice and representation where appropriate.”

Lord Ramsbotham: My Lords, this amendment seeks to include a duty to promote access to legal advice and representation for children in care in order to safeguard and promote their welfare and future life chances. It seeks to do that on the face of the Bill.

Local authorities, in their role as corporate parents, have a particular obligation to promote meaningful access to legal services for the children in their care. Recent evidence presented to the Refugee Children's Consortium suggests that it is not enough for access to legal advice to be included in a child's care plan. There should instead be an active duty to promote access whenever needed. For example, children may need access to legal advice in regard to accessing appropriate education in their area if they have special educational needs; to have a voice in family law proceedings that concern arrangements for their care; to regularise their immigration status; or to claim compensation where they are a victim of crime, including human trafficking.

In the concluding observations of the United Nations Convention on the Rights of the Child's recent periodic report, it was noted that some children in care do not feel listened to, and that unaccompanied, migrant and asylum-seeking children may not receive independent legal advice. I am particularly concerned that children are missing out on opportunities to resolve their immigration status before they turn 18 because of the limited provision of legal advice and the difficulty of finding independent and reliable advice providers. A child without a way to regularise their immigration status in local authority care becomes a young person without support at 18, and now will be able to appeal against deportation only once they have been returned to their country of origin under the terms of the Immigration Act 2016.

My reason for proposing this subsection is that it is yet another example of where the solution does not seem to lie in the hands of the Department for Education alone, but requires co-operation and co-ordination with the Home Office and the Ministry of Justice. I therefore hope very much that the Minister will feel able to accept the amendment and turn it into a government amendment in due course. I beg to move.

Baroness Lister of Burtersett: My Lords, I rise to speak in support of this amendment, especially in relation to unaccompanied migrant children. I will not repeat what I said in Committee, especially around the regularisation of immigration and citizenship status, but will simply emphasise—here echoing the noble Lord—its importance from the perspective of meeting our obligations under the UN Convention on the Rights of the Child.

In an earlier report, the Joint Committee on Human Rights, of which I was then a member, underlined the importance of access to qualified legal advice and representation to compliance with Article 12 of the convention, which stresses that children must be, “provided with the opportunity to be heard in any judicial and administrative proceedings”, affecting them. The Equality and Human Rights Commission highlighted this as a priority issue for implementing the concluding observations of the UN Convention on the Rights of the Child, to which the

[BARONESS LISTER OF BURTERSETT]

noble Lord referred. It calls on the Government to expedite the promised review of the LASPO Act to assess its impact on children. Here it is echoing the committee itself.

In yesterday's Written Statement on the UNCRC the Minister for Vulnerable Children and Families encouraged colleagues to reflect,

"the voice of the child fully in the design and implementation of policy".—[*Official Report*, Commons, 17/10/16; col 23WS.]

In the light of that, I hope the Minister will be able to respond positively to the amendment moved by the noble Lord, Lord Ramsbotham.

Lord Nash: My Lords, I am grateful to the noble Lord, Lord Ramsbotham, for this amendment and for his contribution and that of the noble Baroness, Lady Lister.

In local authorities where the ethos of corporate parenting is strongest—for example, in North Somerset and Trafford—the views of looked-after children and care leavers are at the heart of how local services are created and delivered. Along with the Minister for Vulnerable Children and Families, I applaud the way in which many local authorities, through their children in care councils and care leaver forums, listen and respond to the views and needs of this vulnerable group.

The corporate parenting principles are designed to ensure that the local authority as a whole has regard to the need to act in the best interests of the child whenever it carries out functions in relation to looked-after children or care leavers. Considering this together with the existing functions to ensure that the rights of children and young people are promoted, I do not believe that amending the principles in the way suggested is necessary. However, I am aware of the report on advocacy services for looked-after children by the Children's Commissioner, which highlighted that 55% of looked-after children were unaware of their right to independent advocacy support. Local authorities have a duty to provide assistance for advocacy services for all looked-after children, children in need and children in care, and this includes making them aware of this provision. I do not believe that further legislation would help here.

We need to work directly with local authorities to improve good practice and raise awareness. I will commit to the noble Lord, Lord Ramsbotham, that we will do so. Some local authorities are already very good, but others are not; as the Children's Commissioner made clear in her report. It is about raising the game of the poorer authorities to meet their existing responsibilities. Indeed, while I sympathise with the underlying intention behind the noble Lord's amendment, I believe that it may risk introducing an unhelpful adversarial dimension to the relationship between children and young people and their local authority as corporate parent, which I am sure the noble Lord would not wish to see.

The framework for care planning and the transition from care to adulthood that exists already gives children and young people routes for voicing their views. These include court-appointed guardians, their social worker and a named IRO who follows their case, meets the child privately before the formal meeting to review his or her care plan, and also advises the court.

A key role of IROs is to resolve problems arising out of the care planning process. Every local authority should have a formal process for IROs to raise concerns and to ensure that those concerns are respected by managers. This is referred to in our guidance as the local dispute resolution process. An IRO has the statutory power to refer the case to Cafcass at any stage if he or she considers it appropriate to do so. He or she may consider it necessary to make a concurrent referral to Cafcass at the same time that he or she instigates the dispute resolution process. There is clear guidance on this point in the Children Act 1989 statutory guidance on care planning and in the IRO handbook. That handbook, which is statutory guidance that local authorities must comply with, also makes it clear that each local authority should have a system in place that provides IROs with access to independent legal advice. Skilled independent advocates who speak on behalf of looked-after children also work with the legal service. They provide the independent advice and assistance sought by this amendment.

Local authorities are required under Section 26A of the Children Act 1989, which deals with advocacy services, to make arrangements for the provision of assistance to looked-after children and care leavers for advocacy and representation support, and local authorities must make these arrangements known publicly, as they see fit. I am not therefore convinced that adding a further principle on a specific area as regards services or support, which is already the subject of a statutory duty, is necessary.

The corporate parenting principles and the needs articulated in Clause 1 are about improving the culture and ethos of local authorities so that, as far as possible, children are treated with care and as a good parent would, so that the children do not feel that they are being looked after by an impersonal corporate body. The way to do that is not to create expectations of legal representation for all looked-after children and care leavers when disputes can be resolved without escalating it to lawyers. That means using IROs and advocates effectively and making better use of children in care councils, which all local authorities will have. I hope that the noble Lord will feel sufficiently reassured to withdraw his amendment.

Lord Ramsbotham: My Lords, I am grateful to the Minister for that reply and to the noble Baroness, Lady Lister, for her comments and remarks. I am concerned by the content of the UNCRC's fifth report because it repeats so many criticisms that were contained in the fourth report that do not appear to have been actioned. I am also particularly concerned about the change in status of immigrant children in care, which was included in the Immigration Act 2016. The comment that they lacked legal advice before they were deported is not something of which we should be very proud.

I hope, therefore, that in considering all the things that he has said to me, the Minister will go back and assess the local area legal provision, particularly relating to immigration, because I give notice that I shall raise this question again at Third Reading. In the meantime, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 and 5 not moved.

Amendment 6

Moved by **Lord Warner**

6: Clause 1, page 2, line 27, leave out “A local authority in England must” and insert “In discharging its duties under subsection (1), a local authority must—

- (a) ensure that all the local authority’s relevant partners are aware of their duty under sections 10 (co-operation to improve well-being) and 11 (arrangements to safeguard and promote welfare) of the Children Act 2004 to co-operate with local authorities to improve the well-being and safeguard and promote the welfare of children who fall under subsection (2); and
- (b) ”

Lord Warner: My Lords, in moving this amendment I shall also speak supportively of Amendment 7, to which I added my name after I had tabled Amendment 6. Both amendments seek to achieve similar ends but in slightly different ways. That end is to include in Clause 1 of the Bill on corporate parenting principles the importance of strong co-operation between the responsible local authority and all the other partner agencies that are critical to successful corporate parenting of looked-after children.

On Amendment 6, as I have said in previous discussions with Ministers, we cannot state too often that the Bill should remind partner agencies of their duty to co-operate with the responsible local authority in delivering the best outcomes for looked-after children. The fact that such a duty was set out in the Children Act 2004 does not, in my view, mean that we should not refresh that duty in this new, reforming Bill. It helps, if I may suggest it, to give local authorities leverage with partner agencies when those agencies face difficult priority decisions on how to use scarce resources. That situation, if I may say so, is a lot worse than when that previous piece of legislation was passed. Local authorities need all the help they can get to leverage support for the children they are responsible for from these partner agencies at a time of very difficult public expenditure situations.

These same arguments, I suggest, apply to Amendment 7, which the noble Lord, Lord Watson, will be elaborating on. I would be willing to forgo Amendment 6 if the Minister finds Amendment 7 more to his liking. I beg to move.

5 pm

Lord Watson of Invergowrie: My Lords, I and other noble Lords attempted in Committee to persuade the Minister that the list of corporate partners in the Bill should be widened. We were unsuccessful then, so today we have tried a slightly different approach with an amendment that speaks only of, “such other persons or bodies as may be defined in regulations”, with the proviso that such regulations must be subject to the affirmative resolution procedure.

Corporate parenting is one of the most important roles of a local authority, and elected councillors take that responsibility extremely seriously. Corporate parenting means the full and active involvement of the formal and local partnerships needed between local authority departments and services and associated agencies which

are responsible for working together to meet the needs of looked-after children and young people as well as care leavers. Recognising that the different component parts each have a contribution to make is critical to the success of corporate parenting. A major challenge in operating effective corporate parenting is to manage its contradictory nature, balancing the need for continuity with the changes necessarily involved, whether through political control, staff changes within the local authority or other partners, or the emergence of new policies, perhaps even new legislation. The aim must remain static: to help provide each individual child or young person with a sense of stability in their life.

Any duties to co-operate must, of course, be reciprocal, with local government, health partners and the police all working together to protect and support looked-after children in their area. All corporate partners need to fully understand and accept their responsibilities as corporate parents, and governance arrangements will be in place to make sure that work within councils and their partner organisations is child-centred and focused on achieving the overarching outcome. The overarching outcome of corporate parenting should be for young people who have experienced the care system to go on to be successful learners in whatever career path they choose, to become confident individuals, responsible citizens and effective contributors whose life outcomes mirror those of their peers as far as possible. The ultimate aim must be that there is no discernible difference between the outcomes of children and young people who have been looked after and those who have not. That, I accept, is a lofty aim, but it is surely one that no one who has the interests of our most vulnerable children at heart can turn away from. I hope that, in that sense, the Minister will look upon Amendments 6 and 7 and give a positive response.

Baroness Pinnock (LD): My Lords, I draw the House’s attention to my interests as a councillor in the Borough of Kirklees and therefore a corporate parent, with whom the buck finally lands. We had a considerable debate in Committee, as the noble Lord, Lord Watson, said, because there was a lot of concern about having clarity of definition about corporate parenting principles. The noble Lord, Lord Ramsbotham, talked about the report of the noble Lord, Lord Laming, *In Care, Out of Trouble*, drawing attention to, “Less clarity leading to more inconsistencies”. That is precisely why, at this stage, there is an endeavour to find greater clarity in the corporate parenting principles laid out in the Bill as it stands.

I also suggest that we ought to support greater clarity because of the changing role of local authorities, given the financial pressures on them. It is also the right thing to do because it makes corporate parenting more effective. There has to be work across other public sector partners; those referred to in the amendment laid before us are the police and the health service. The reason for doing that is to ensure that those two bodies in particular have it as a priority in their planning and actions that they take note of the importance of corporate parenting when they meet young people who are in need of care, and who are sometimes—more often than we would like—brought to the attention of the law.

[BARONESS PINNOCK]

The third reason why we support the amendment proposed is because, in the principles as laid out, and as described by the Minister in Committee, everyone who is employed by a local authority is responsible as a corporate parent. My fear is that, if everybody is responsible, no one is. That is why I have argued consistently that we need to be clear about where the final responsibility lies.

We need to expand the definition of corporate parenting responsibilities to include other key public sector organisations, but also to have clarity within local authorities on where the final responsibility lies. In the words of the noble Lord, Lord Warner, it is always helpful to refresh requirements in earlier legislation because it brings it to the attention of professionals that this is a matter on which legislators place great importance. With those words, I support wholeheartedly Amendments 6 and 7.

Lord Nash: My Lords, I am grateful to the noble Lords, Lord Watson and Lord Warner, for the opportunity to discuss the most effective way of ensuring that partner agencies support local authorities in fulfilling their role as corporate parents, and grateful to them and the noble Baroness, Lady Pinnock, for their contributions to today's debate.

Legal responsibility and accountability for looked-after children and care leavers rests with local authorities. We believe that maintaining this clear accountability is right to protect vulnerable young people. As such, it is important that the law is clear that local authorities are the corporate parents for looked-after children and care leavers. Section 10 of the Children Act 2004 already places a robust and clear statutory duty on local authorities to,

“make arrangements to promote co-operation”,
to improve the well-being of local children and care leavers in relation to,

“physical and mental health and emotional well-being ... protection from harm and neglect ... education, training and recreation”,
the contribution made by children to society, and
“social and economic well-being”. The partners listed in Section 10 include the agencies necessary to support vulnerable children properly. This includes those listed in this amendment, such as health bodies and the police, but also organisations such as schools and further education institutions that local authorities consider appropriate.

I absolutely agree that partner agencies must be aware of their duties to co-operate with authorities to improve and have regard to children's welfare under Sections 10 and 11 of the Children Act 2004. However, in practice, to fulfil these duties effectively local authorities would have to make relevant partner agencies aware of their obligations under Sections 10 and 11, so these amendments simply duplicate what is already legally required or necessary in practice to meet existing requirements regarding looked-after children and care leavers. I should add that, crucially, Section 10 goes wider than the amendment of the noble Lord, Lord Watson, as it also places a reciprocal and direct duty on partner agencies to co-operate with local authorities in this regard. Moreover, Section 11 of the Children Act 2004 places a direct duty on the bodies it lists to

make arrangements to ensure that they have regard to the need to safeguard and promote the welfare of children when discharging their functions. Therefore, all the bodies within the scope of this provision will be required as of necessity to know about it.

When defining well-being, Section 10 actively addresses key areas where noble Lords rightly want assurance that all vulnerable children will receive high-quality support, such as mental health and emotional, social and economic well-being. This clear and holistic definition provides local authorities with a robust mandate for interagency co-operation to improve the wider well-being of children. Section 10 gives local authorities a strong lever to get the local co-operation needed properly to support vulnerable children and young adults in key aspects of life. The corporate parenting principles provide a further lever for local authorities to engage with key partners and utilise Section 10 arrangements to co-operate to improve the well-being of looked-after children and care leavers.

The fourth principle, in particular, provides for local authorities to have regard to the need to help looked-after children and care leavers access and make the best use of services provided by the local authority and relevant partners. Strong interagency working, underpinned by Section 10, will be crucial to achieving this. The statutory guidance on the corporate parenting principles will emphasise it. It is also important to recognise that there are numerous examples of local authorities and other agencies already working effectively together in the interests of looked-after children and care leavers.

In his report *Residential Care in England*, Sir Martin Narey refers to the protocol between 10 local authorities and four police services. The protocol aims to reduce the prosecution of children wherever possible by encouraging the use of restorative justice approaches. Trafford provides another good example of strong interagency working. Here, collocation of social workers with health staff and child and adolescent mental health services supports good access to services.

What Peers are seeking to achieve across the country—indeed, what we want—is already happening. It just needs replicating and this is about disseminating good practice and influencing hearts and minds. The corporate parenting principles aid that process because they apply to the whole authority and are intended to create a culture change. We recognise, of course, that, despite the existing legislation to promote interagency co-operation, practice is not always as consistent as it should be. We therefore plan to engage further with directors of children's services on this issue with the aim of identifying other positive practice and disseminating it more widely.

Given the strength of the existing duties to co-operate under Section 10, our intention to reinforce this in the statutory guidance on the corporate parenting principles and to continue the drive to improve and embed effective practice, I hope the noble Lords, Lord Watson and Lord Warner, will feel reassured enough to withdraw their amendments.

Lord Warner: My Lords, I think it is a missed opportunity, but I am glad that the Minister is going to put some of this into statutory guidance. In the meantime, I beg leave to withdraw my amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Amendment 8

Tabled by Baroness Tyler of Enfield

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

“Duty to promote physical and mental health and emotional well-being

(1) The Children Act 1989 is amended as follows.

(2) In section 22 (general duty of local authority in relation to children looked after by them), after subsection (3C) insert—

“(3D) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a looked after child includes a particular duty to promote the child’s physical and mental health and emotional well-being.

(3E) A local authority must develop a local care pathway to ensure that the needs of looked after children, relevant children and former relevant children are addressed through the provision of—

(a) a mental health assessment at the time the child enters care;

(b) regular monitoring of the child’s on-going need for mental health support;

(c) a mental health assessment at the time the child becomes a relevant child or former relevant child;

(d) provision of the necessary support to meet the needs of the child, relevant child or former relevant child as identified by the assessment and monitoring conducted under paragraphs (a) and (b), for as long as is necessary until the former relevant child reaches the age of twenty-five.

(3F) Each clinical commissioning group for an area, any part of which falls within the area of the local authority, must take steps to assist the local authority in the exercise of its functions under subsections (3D) and (3E).

(3G) Each clinical commissioning group must appoint at least one registered medical practitioner and at least one registered nurse for the purpose of discharging the duty under subsection (3F).”

Baroness Tyler of Enfield: Will the Minister clarify that he will meet me before Third Reading to consider the issues I have raised?

Lord Nash: I should be delighted to clarify that and I will do so.

Amendment 8 not moved.

Amendment 9

Moved by Lord Mackay of Clashfern

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

“Member of care staff to be responsible for the well-being of a child in local authority care

(1) When a local authority receives a child into its residential care, it must forthwith appoint one of its care staff to be responsible for the well-being of that child and, subject to subsection (2), the appointment shall endure for so long as the child remains in the care of the authority.

(2) If a change of circumstances makes necessary the termination of the appointment under subsection (1), the authority must forthwith appoint another member of its care staff to be responsible for the well-being of the child.”

Lord Mackay of Clashfern: My Lords, I do not propose to elaborate because we have already discussed this, but I want to take the opportunity to answer the point made by the Minister. It is in relation to the Barnardo’s release from the National Independent Visitor Development Project, dated 8 August 2016, that the figure of 97% is mentioned. I am a member of Barnardo’s but had nothing whatever to do with the preparation or publication of this report. It came as a rather sad message to me.

I am sorry that, due to the same sort of considerations that the noble Lord, Lord Ramsbotham, mentioned, I have not been able to attend the briefings that have been held because I have not been here, but I would be very happy to meet the Minister. I sincerely hope that, at least, the Government will be able to incorporate this amendment by way of guidance in the standard that they have set out. I beg to move.

Lord Nash: I would be delighted to meet my noble and learned friend Lord Mackay to discuss this further. It is important that we do so.

Lord Mackay of Clashfern: I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

5.15 pm

Amendment 10

Moved by Lord Watson of Invergowrie

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

“Duty to provide suitable accommodation

(1) Each local authority in England must take reasonable steps to provide all former relevant children up to the age of 21 with accommodation that—

(a) is within the authority’s area; and

(b) meets the needs of those former relevant children.

(2) A local authority is deemed to have discharged this duty towards a former relevant child where staying put arrangements have been made under section 98 of the Children and Families Act 2014 (arrangements for living with former foster parents after reaching adulthood).”

Lord Watson of Invergowrie: My Lords, Amendment 10 would place a new duty on local authorities to take reasonable steps to provide care leavers up to the age of 21 with suitable accommodation. It would also end the inequality between young people in stable foster care placements, who are entitled to stay with their foster family until the age of 21 under the “staying put” arrangements, and other groups of young people leaving care.

The Bill rightly aims to improve outcomes for care leavers, a group of young people who, as many noble Lords have said, face significant challenges. However, as currently drafted, we do not believe that it goes far enough to make a real difference to young people’s lives. Organisations supporting these young people have consistently said that safe and stable accommodation must be the starting point for improving outcomes in other areas. Education, training, employment and health

[LORD WATSON OF INVERGOWRIE]

would be the main examples. A 2015 report by the National Audit Office found that young people with a background in care were more likely to become homeless or to end up in custody. Indeed, the most recent figures from the Department for Education show that, in 2015-16, 7% of care leavers aged 19 to 21 were in accommodation considered unsuitable and the suitability of the accommodation of a further 11% could not be established. Equally, 4% of care leavers aged 19 to 21 were in custody, and 40% of care leavers in that age group were not in education, employment or training. All these figures combined show the scale of the task that faces us when we seek to look after young people leaving care.

When most young people leave home, they are usually able to continue to rely on their parents, as the noble Lord, Lord Warner, said, for many things, not least advice as well as practical and financial support. Young people who have been in care do not have that support system open to them. Many have significant emotional and mental health needs which are often due to a history of abuse or neglect. The transition to adulthood can be daunting at the best of times for all young people. By definition, looked-after children rarely experience the best of times and have to cope with multiple changes: finishing school or college; moving from child and adolescent mental health services to adult services; and often the need to find alternative living arrangements. Even among children in different forms of care, there is real inequality between care leavers who can stay with their foster family under “staying put” and all other young people leaving care.

The Government have promised to pilot “staying close”, which would offer accommodation to young people leaving residential care, but we understand there is to be no duty on local authorities to do so, and there is certainly no clarity on funding. As it stands, if you are not in a stable foster placement at 18, you may well end up in an unsafe or unstable accommodation placement or be homeless or sofa-surfing. Outcomes for care leavers in general will not improve until this issue is addressed.

In 2014, the Government recognised the importance of safe, stable and appropriate accommodation for care leavers. “Staying put” arrangements mean some young people can remain with their foster family until they reach 21. In 2015-16, of those who ceased to be looked after on their 18th birthday and who were in foster care, 54% of 18 year-olds, 30% of 19 year-olds and 16% of 20 year-olds were able to remain with their foster family. However, for other young people, including those in residential accommodation, who may be the most vulnerable of all and have significant needs, no equivalent support is available. This Bill offers an opportunity to ensure that all young people leaving care have an appropriate place to live until they reach 21 to help them start their adult lives.

In July, the Government committed to piloting “staying close” in *Keep on Caring: Supporting Young People from Care to Independence*. The aim is to explore models of accommodation for young people leaving residential care. That is to be welcomed, but Amendment 10 enables us to go a step further. I hope that the Government will look upon it favourably.

Amendment 12 in my name amends Clause 2. It concerns the local offer for care leavers and seeks to set up a national minimum standard that would set out the quality and extent of services to be offered by local authorities to care leavers. In a later group, we will discuss the national offer. I am aware that the Government, at this stage at least, are not minded to embrace such a concept. Setting out a national minimum standard is a similar approach in the sense of avoiding the postcode lottery that we all understand and that applies in different ways in different settings. That lottery could allow local authorities in some areas to provide a much less satisfactory service to care leavers than is provided in others. That is why it makes sense to set a national minimum standard. It would be no more than a minimum to be built on but it is necessary so as to have something on which to fall back.

Regarding the other part of the amendment, it makes sense to consult appropriately to ensure that the basis on which the national minimum standard would be set was one that carried the benefit of the experience of the various corporate parenting partners. It is important to say that the setting of a minimum standard is something that we need to do because the patchwork effect of the accommodation issues to which I referred in commenting on the earlier amendment show that there is no common policy across the country. That, surely, is not acceptable. For that reason, I beg to move.

Lord Warner: My Lords, I shall speak in support Amendment 12, to which I have added my name, but I should like first to add my support to Amendment 10. Affordable single-person accommodation is one of the areas in shortest supply in many of our cities. This is the pool in which we are often trying to find accommodation for these young people. They do need a lot of support. We are asking them to live independently and to battle their way through what is often a confusing and difficult accommodation market. Even older, more mature adults find it difficult to survive in that market.

We are setting these young people up to fail if we do not do more to help them to get into safe and suitable accommodation. It is no wonder, sadly, that we find so many of these young people having been in care sleeping rough in many of our inner cities, including not far from this place. Anyone who late at night wanders around the South Bank will find some of these characters who have been in care having a difficult time. When you talk to some of them, you hear that they have never had good accommodation.

The Minister should take this seriously. When I was chairman of the Youth Justice Board this area was one of the major contributory factors to many of these young people moving down a path of crime and into the youth justice system. Tackling it is therefore in everyone's interests, not just those of the young people. I strongly support Amendment 10.

I also support Amendment 12. Too often we pass reforming legislation without saying what would be an acceptable level of response by those responsible for implementing that legislation. There is a long history of the lifetime outcomes for looked-after children being inadequate. We shall come to the issue of outcomes in a later amendment. To address this long-standing

problem, the Government would do well to set out some national minimum standards for the services that must be offered under their local offer for care leavers. Far too many young care leavers do not know what they can expect from the authority that has been looking after them when they move into the wider world.

From my experience as the commissioner for children's services in Birmingham—appointed by the current Secretary of State's predecessor but one, who has since gone on to further fame—one also finds huge variations in the performance of some of the leaving-care teams within the same authority. This is not an area that has been well served by consistency even within the same authority. Setting some national standards would not just be helpful for consistency between authorities but would help some of the bigger authorities to have consistency within themselves. So I strongly support Amendment 12.

Baroness Bakewell of Hardington Mandeville: My Lords, I speak briefly to Amendment 10 and to agree with the comments of the noble Lords, Lord Watson and Lord Warner. In the market town in my own area, the number of beds available for young people in the excellent Foyer has been reduced over recent years, and it is now in danger of actually closing. As well as providing excellent accommodation to allow young people, especially care leavers, to move on and gain independence, it has provided training, other support and a coffee bar. It is a great shame, to put it mildly, that such a facility should be closed because of the lack of funding for the number of beds there.

As the noble Lord, Lord Warner, who is much more experienced in this area than me, has said, young people, especially care leavers, are very vulnerable and they require adequate quality accommodation to meet their needs.

Lord Nash: My Lords, I am grateful to noble Lords for these amendments, which relate to the local offer for care leavers. Together, they seek to introduce a national minimum standard for the local offer and to place a duty on local authorities to provide suitable accommodation for all care leavers until the age of 21.

It is worth reminding ourselves what the local offer is intended to achieve. It is an opportunity for local authorities to set out in one place the services they provide to assist care leavers as they move into adulthood and independent living. In particular, it should include services relating to health and well-being, education and training, employment, accommodation and participation in society. The local offer must include both care leavers' statutory entitlements, as well as the additional services and support that local authorities provide to meet the needs of care leavers in preparing for adulthood and independent living. The national minimum offer that the noble Lord seeks is, in effect, the statutory rights that all care leavers are entitled to, but we expect local areas to go beyond the statutory minimum and set this out in their local offer.

Under Clause 2, before publishing their local offer or any revised version of it, local authorities must consult care leavers, as well as any other persons or bodies who are representative of care leavers. I do not believe that prescribing a national minimum standard setting out the services that must be included under

the local offer is the right way forward. It would mean central government deciding what is best for care leavers in their local area, rather than the local authorities and care leavers themselves. A set of minimum standards could serve to limit innovation and creativity, rather than to drive the improvements that we all want to see. We have already seen innovation and creativity in the best local authorities with a strong corporate parenting ethos and a care leaver local offer in place, such as North Somerset, Southwark and Trafford.

Turning to the specific duty proposed in Amendment 10, I reassure noble Lords that local authorities are already responsible for providing suitable accommodation to all care leavers aged 16 to 17. "Suitable" is defined in statutory guidance, which makes it clear that bed-and-breakfast accommodation is not a suitable option and must be used only in exceptional circumstances and for no more than two working days.

When care leavers reach the age of 18, local authority care teams are responsible for helping them to access suitable accommodation. The latest data for the year ending March 2016 show that only 7% of care leavers aged between 19 and 21 were in accommodation deemed unsuitable.

There are a range of accommodation options for care leavers aged 18 or above. As we have already discussed, we introduced "staying put". As I am sure the noble Earl, Lord Listowel, who is not in his place, would be pleased to hear, the latest data show that 54% of 18 year-olds who were eligible to stay put chose to do so. Data also show that 30% of 19 year-olds and 16% of 20 year-olds were still living with their former foster carers.

5.30 pm

I am also pleased to say that, since we last debated this issue, we have committed to introduce "staying close", which we have already discussed. We will pilot different models of "staying close" to better understand what works and how much it will cost. We will announce further details in the coming months. In addition to "staying put" and "staying close", there are a range of other semi-independent accommodation options for care leavers which provide a stepping stone to independent living.

We would expect local authority leaving care teams to work closely with housing services to help care leavers to access accommodation that is right for them. The Government are funding the homeless charity St Basils to work with local authorities to improve joint working between children's services and housing services and to help them develop accommodation pathways for care leavers. Care leaving teams should also support care leavers to understand the housing options available and prepare them for living independently as part of the pathway planning process.

Where care leavers do struggle to find and maintain accommodation, they have a priority need within the homelessness legislation until the age of 22, and they are also a priority group in statutory guidance on the allocation of social housing.

In light of the points I have made, I hope the noble Lord will feel reassured enough to withdraw the amendment.

Lord Watson of Invergowrie: My Lords, first, I hope and suspect that my eyebrows were not the only ones to raise when the Minister said that it was not for the Government to set in statute what local authorities should be doing. It has been the pattern in recent years for Government to say what local authorities should not be doing. Housing and education were increasingly taken away from them; then planning was taken away; and social work services will to some extent be taken away if Clause 29 of the Bill becomes law. I suspect some in local authorities would be quite pleased to have the Minister standing up for them, but I am not being entirely serious, because I am suggesting that the Government should go beyond the minimum. The Minister says that there is a minimum, but the Bill does not say what that should be. Without that being set out, what is a minimum? We could be here until a week on Tuesday discussing what that is, so that is not a suitable answer. I am not asking the Government to tell all local authorities what they should do but I am asking them to set the minimum, because some local authorities clearly do not meet that minimum. We heard from the noble Lord, Lord Warner, a man whose experience is vast, of the inconsistencies that already exist. I cannot believe that the Minister would regard that as acceptable—indeed, I know he would not. If it is not acceptable, we need to do something about it. That is why this amendment has been framed.

The Minister said a few moments ago that the local offer must aim to support independent living. Well, the most basic part of independent living is accommodation. While I accept what the Minister says about various agencies supporting accommodation, the most basic right anyone needs to build a sustainable life is accommodation of their own, rented or owned. Without that, I do not see how anybody can be expected to make their way in life successfully for very long. So the Government's response is disappointing and—dare I say—a bit complacent. The situation that the Minister outlines is not that found on the ground by local authorities or by many of the organisations working in the field. I regret that the Minister has not been willing to go further, but I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Clause 2: Local offer for care leavers

Amendment 11

Moved by Lord Farmer

11: Clause 2, page 2, line 43, at end insert—
“() relationships.”

Lord Farmer (Con): My Lords, I rise to speak to Amendment 11, tabled in my name and those of my noble and learned friend Lord Mackay of Clashfern and the noble Baroness, Lady Tyler. To begin with, I must confess that I was not giving the Minister my full attention when he referred to this amendment earlier in speaking to Amendments 2 and 9. However, I think I heard encouraging words, so I will be speaking with an optimistic heart.

As I said in Committee about an identical amendment, including the word “relationships” would remedy an 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 to help young people develop and maintain healthy and supportive relationships should be available alongside the other five areas of health and wellbeing, education and training, employment, accommodation, and participation in society. I explained then how, when children and young people are taken into the care of the local authority, first and foremost these circumstances typically create a relationship problem. There are profound long-term effects of losing parental attachments and bonds with siblings and others in the extended family. Ministerial architects of the Bill had the best of intentions in this area but the wording acknowledges relationships only scantily and, as a consequence, ineffectively—as I hope to show here today. If the goal is to change the culture in local authorities so that relationships become of central importance, as the Government intend, legislation has to provide a stronger lead.

Clause 1 provides seven corporate parenting principles, including that children should have stability in their home lives and relationships. The local offer provided for in Clause 2 will, according to the note for Peers we received at the recent meeting with the Minister, be one of the main ways in which the corporate parenting principles are brought to life in relation to care leavers.

However, the draft local offer that was recently circulated to Peers was devoid of any reference to relationships, so how can this document claim to bring to life the corporate parenting principle about relationship stability? Yet this omission could have been anticipated, given that Clause 2, which guided the guidance, as it were, did not specify that information on relationships would form part of the service offering, hence this amendment.

The draft statutory guidance for applying corporate parenting principles for care and pathway planning does mention, on page 19, the need for looked-after children and care leavers to build resilience by forging strong relationships if they are to thrive. It goes on to say that this will mean local authorities having regard to the need to maintain, as far as possible, consistency in the home environment, relationships with carers and professionals and school placement. It then goes on to make important points about stability of housing tenure and provide good practice examples of financial and practical help.

However, there is nothing in either the guidance or the local offer about how to maintain stable relationships, and nothing about helping young people to form networks of supportive relationships beyond those with paid professionals and those formally designated as carers.

We withdrew this amendment earlier after reassurances from the Government 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 to make a successful transition to independence. The importance of relationships is central to the corporate parenting principles ... 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".—[*Official Report*, 4/7/16; cols.114-115.]

So the Government understand that care leavers need not just continuity of care, but support networks and relationship education.

Support networks do not just spring up but typically need the encouragement and facilitation of adults. In Committee I mentioned family finding projects, such as those taking place in Orange County in California. Family finding is an intensive search method to find family members and other adults who would like to step in and care for children and young people in, or about to leave, foster care who lack permanent relationships. The goal is to locate long-term, caring, permanent connections and relationships for them and to establish a long-term emotional support network with family members and other adults. They may not be able to take the child into their home but still want to stay connected with them and to journey with them through life. In Orange County, 97% of the young people who took part increased family contact, and 89% have lifelong connections. Edinburgh City Council has already adopted this approach. Encouragingly, in Grand Committee the Government stated their interest in this approach for their care leavers strategy, which the Family Rights Group is now testing in a number of local authorities.

Yet however many family members and caring adults we try to cluster around young people, these connections will be insufficiently sticky if young people are pre-programmed to reject the relationships that are on offer because of past experiences, or have no understanding of what a good relationship looks like. This is where relationship education comes in. It can be delivered informally when a young person finds it very hard to maintain a relationship with a key figure in their life. They mention it, say, to their personal adviser, and that person purposefully helps them to navigate through difficulties or misunderstandings in exactly the same way that a loving parent would. I am sure this already happens but it needs to be an important part of every personal adviser's job description and skill set. Alternatively, it can be more formally delivered through the work of services like Love for Life, which is part of TwentyTwenty, the award-winning mentoring organisation with which the Government have contracted to work in the recently announced Derby social mobility hub. The ethos running through this and many other third sector organisations is that the skills to build good relationships can be taught and caught.

I have met the Minister, Edward Timpson, and am in no doubt that he is alive to the importance of relationships, but the Bill simply does not yet reflect how quintessential they are, as stated by the Government. Instead of trying to get this in the Bill, I could be arguing for better recognition in the draft guidance, the draft local offer and the forthcoming care leavers strategy. However, it is not a question of either/or; it is both/and. It could sensibly be surmised that the Government overlooked the need to make explicit reference to relationships in their draft local offer, despite what they say about its importance to the

corporate parenting principles, because it was not included in the legally binding list provided in Clause 2. This suggests that it would be too easy for local authorities to do the same, thereby undermining the opportunity presented by the local offer to drive much-needed cultural change in this area. I beg to move.

Baroness Tyler of Enfield: My Lords, I support Amendment 11, to which my name is attached, as it was in Committee. To reiterate what I said then, and despite the very good debate we have already had today on Amendment 2, the Bill itself is currently almost devoid of references to relationships; indeed, you might almost say it is a bit of a relationship-free zone. That is ironic when what we are all trying to do here is improve the lot of the very vulnerable children and young people who most need love, warmth, emotional security and human empathy to help them on their journey through life, given their very troubled start. It is a statement of the blindingly obvious that good relationships are utterly indispensable to that end.

The noble Lord, Lord Farmer, who is such a passionate advocate in this field, has already referred to the need for a change in the culture of many local authorities so that they also make promoting relationships central to their work. I know that there are some very good examples of good practice here, but I want to talk very briefly about what cultural change requires and why it is important. It could be assumed that good-quality relationships, particularly the support of peers and adults who are not paid to take an interest, are somehow nice to have but out of the reach of many young people in, or coming into, the care system. If so, that assumption will shape a local authority's response. It will focus almost exclusively on ensuring that a young person has the material, financial and practical support that they need in the absence of the family ties through which these things typically come. It will also put a greater load on the social worker and personal adviser role.

5.45 pm

If, however, the assumption is that the local authority can and must ensure that a young person leaves care with what you might call the emotional ballast that a supportive network provides, practice will look very different. So changing the language and constantly reiterating the more relational emphasis that I know the Government want to promote will help change those assumptions and the culture, which is why the amendment is so important. It is also why the Bill needs to be explicit about local authorities' responsibilities to help young people build and maintain relationships with people who are genuinely interested in them as individuals. For example, maintaining ties with family members such as siblings or grandparents is a really important example here because, even if that young person has had to be removed from their family, those bonds still exist and they cannot and should not be severed lightly. As the noble Lord, Lord Farmer, said, we know that in their early days many of these young people whom we are so concerned about have, sadly, not had role models of good relationships in the home.

I heard the encouraging words that the Minister said earlier on. He sounded very sympathetic to this amendment, so I am very much looking forward to his response.

Lord Mackay of Clashfern: My Lords, I am happy to support the amendment. Everything that I said earlier was about relationships and how vital they are, so it gives me great pleasure to support my noble friend's amendment.

The Earl of Listowel: My Lords, perhaps I may speak briefly in support of the amendment. Earlier we debated my Amendment 2, and I indicated this morning to the Minister that I would not be seeking to move it. I must say that, listening to the debate in the Chamber, I was almost tempted to change my mind. The amendment was brought to my attention fairly late, which is why I was reluctant to push it as hard as I might. This is an excellent amendment, if I may say so. I understand that the Minister is going to give a very sympathetic response. I hope he can go as far as possible towards enshrining this in statute. I look forward to his response.

Lord Nash: My Lords, I am grateful to my noble friend Lord Farmer and the noble Baroness, Lady Tyler, for the amendment. It seeks to add services relating to relationships to the services that local authorities may offer as part of their local offer. I understand the intention behind the amendment, and I agree that high-quality and consistently supportive relationships are critical to supporting care leavers into successful independent lives. I believe that the key to getting these relationships right is down to how the services are delivered, with individual professionals, volunteers and personal advisers building a strong and positive rapport with young people. I was very interested to hear what my noble friend Lord Farmer had to say about Orange County. It is an area I know well because in a past life I used to travel there regularly on business. I know that it is a very forward-thinking part of the world.

This is an important issue and I am certainly very sympathetic to the points that have been made. I am therefore very happy to take them away and consider further in detail whether an amendment to the Bill along these lines is the best way of securing further progress in this area. I hope that, in view of this, the noble Lord and the noble Baroness will feel reassured enough to withdraw the amendment.

Lord Farmer: I thank the Minister for that encouraging response. I also thank the noble Baroness, Lady Tyler, my noble and learned friend Lord Mackay and the noble Earl, Lord Listowel, for their support. I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

Amendment 13

Moved by The Earl of Listowel

13: After Clause 2, insert the following new Clause—

“National offer for care leavers

- (1) The Universal Credit Regulations 2013 are amended as follows.
- (2) In regulation 102(2) —
 - (a) in paragraph (a) after “18 or over” insert “and paragraph (b) does not apply”;

(b) in paragraph (b) after “16 or 17” insert “or is a care leaver within the meaning given by section 2 of the Children and Social Work Act 2016 and is under the age of 25”.

(3) In regulation 103(2) —

(a) in paragraph (a) after “18 or over” insert “and paragraph (b) does not apply”;

(b) in paragraph (b) after “16 or 17” insert “or is a care leaver within the meaning given by section 2 of the Children and Social Work Act 2016 and is under the age of 25”.

(4) In regulation 104(2) after “18 or over” insert “and section (3) does not apply”.

(5) In regulation 104(3) after “16 or 17” insert “or is a care leaver within the meaning given by section 2 of the Children and Social Work Act 2016 and is under the age of 25”.

(6) The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 are amended as follows.

(7) In regulation 4(1), Second Condition, after paragraph (b) insert—

“(c) is aged at least 18 and is a care leaver within the meaning given by section 2 of the Children and Social Work Act 2016, and is under the age of 25, and undertakes not less than 30 hours work per week.”

(8) The Housing Benefit Regulations 2009 are amended as follows.

(9) In regulation 2, in the definition of “young individual”, in each of paragraphs (b), (c), (d), (e) and (f), for “22 years” substitute “25 years”.

(10) The Local Government Finance Act 1992 is amended as follows.

(11) In section 6(4) (persons liable to pay council tax), after “etc)” insert “or 10A (care leavers)”.

(12) In Schedule 1 (persons disregarded for purposes of discount), after paragraph 10 insert—

“Care leavers

10A A person shall be disregarded for the purposes of discount on a particular day if on the day the person is—

(a) a care leaver within the meaning given by section 2 of the Children and Social Work Act 2016; and

(b) under the age of 25.”

(13) The Council Tax (Exempt Dwellings) Order 1992 is amended as follows.

(14) In Article 3, Class N, after paragraph 1(b) insert—

“(c) occupied only by one or more care leavers within the meaning given by section 2 of the Children and Social Work Act 2016 who are under the age of 25.”

(15) The Secretary of State may by regulations made by statutory instrument make additions to the national offer for care leavers beyond those elements prescribed in the Income Support (General) Regulations 1987, the Working Tax Credit (Entitlement and Maximum Rate) Regulations, the Housing Benefit Regulations, the Local Government Finance Act, and the Council Tax (Exempt Dwellings) Order.

(16) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

The Earl of Listowel: My Lords, Amendment 13 relates to the national offer for care leavers. I am grateful for the support of the Labour and Liberal Democrat Front Benches for this amendment. Recently I heard

from Ashley, an 18 year-old in a Staying Put placement who has experienced at least six different foster placements during her time in care.

As I speak, I am thinking about a colleague from a charity board who recently described to me her early experience. Her mother was a crack addict who told her children both that she valued drugs more than them and that if they did not visit her regularly, she would take her own life. My colleague is extremely bright and hard-working and made it to university—one of the 6% of care leavers who do so. There, she had many black days, but she was supported by her flatmates, she completed her degree and, in August of this year, was married to a kind man—an accountant. So many care leavers do not experience that success. Without a family to call on, they might quickly find themselves alone and in debt, perhaps destitute. Our ambition must be to furnish care leavers with the necessary skills and training to allow them to excel and achieve their full potential, as we would wish for our own children.

However, financial security—the bedrock of being able to do these things—is so often difficult for them. Jack, a care leaver who attended a meeting organised by the Children's Society last week, subsequently told me that, "The national offer would provide stability to care leavers, with protection from the darker side of financial troubles. It means we could focus on our education, employment or training and not on the stress of how we are going to pay for this or that, or whether to buy a bus pass or food shopping that week".

I welcome the steps that the Government have taken to better support care leavers: allowing them to stay put with their foster carers until the age of 21; the Ofsted inspection of care leavers services; the Government's care leavers strategy; and the new rights under the Bill. However, we all know that we need to do more. The Bill makes a local offer, which is very welcome, but in their role as corporate parent, the national Government need also to provide a robust offer for care leavers, with a particular focus on financial support. If the Government are serious about building a country that works for all and improves the lives of those who are just managing to keep their heads above water, they must ensure that a package of improved support for care leavers is central to that commitment. It is certainly not for this House to decide on financial matters. However, as this Bill begins with your Lordships, we can give the other place an opportunity to discuss matters that are vital to the welfare of care leavers.

This amendment has four parts. The first provides for a reduction in the penalties attached to sanctions targeted at care leavers under the age of 25. The second would provide working tax credit for care leavers under 25, and the third would extend the current exemption from the shared accommodation rate for housing benefit for care leavers from 22 to 24. Finally, the amendment would provide an exemption from council tax for care leavers under 25.

Research from the Children's Society shows that currently, care leavers are three times more likely to receive a sanction than other young claimants, yet are much less likely to challenge these sanctions, perhaps due to the lack of a pushy parent. When they do appeal, however, two-thirds of these sanctions are

overturned. This amendment would soften the sanctions on care leavers under the new universal credit system, in recognition of the additional complexities in their lives—meaning that the maximum sanction would apply for four weeks, as opposed to the existing four to 13 weeks for a first-time infraction. The cost of this measure is effectively nil, as sanctioning is a form of punishment, not a revenue generator for the Treasury.

The noble Lord, Lord Freud, has made an eloquent case for the mental health benefits of employment—but, to be a viable option for care leavers, work must pay. For this reason, our amendment would allow for care leavers under the age of 25 to claim working tax credit—a crucial form of support already paid to those over the age of 25 and to those under that age if they have children or disability. I recognise that working tax credit is soon to be phased out, but, under the new universal credit arrangements, under-25s will still be penalised, so it would be a very important flag to ensure that universal credit will also recognise the needs of this particular group.

For care leavers, a job can mean the end of isolation, as well as the beginning of independence; yet care leavers are heavily overrepresented among young people who are not in employment, education or training. Perhaps the existing assumption behind the working tax credit age limit is that low-income young people will be living at home with their family. This assumption clearly does not apply to care leavers, and they should therefore be able to benefit from this extra help if on a low income.

Thirdly, our amendment would ensure that no care leaver would pay council tax up to the age of 25. Already, six local authorities have suspended this charge for care leavers. Where they are liable for council tax, most care leavers already receive heavy discounts—but still, many struggle to cover this. Despite these changes, we still have the nonsense of corporate parents sending around the bailiffs or taking their own children—or children for whom they have a corporate responsibility—to court to pursue small amounts of money, which might cost more than the money recovered. I am encouraged that, in their latest strategy, the Government have asked local authorities to consider a council tax exemption for care leavers. However, I am sure that noble Lords would agree that the sensible thing to do is to mandate that all local authorities do this, as they do already for those in higher education.

Finally, our amendment would disapply the shared accommodation rate for care leavers until the age of 25. Currently, when a care leaver turns 22, if they are living in privately rented accommodation, their housing benefit is often reduced to that sufficient to rent for a room in shared accommodation, rather than a self-contained property. For many care leavers, their first home might be the first stable home they have ever had. Faced with reduced housing benefit, they might experience dislocation and, possibly, homelessness. We know that approximately 25% of the homeless population have been in the care of a local authority and are therefore care leavers. It cannot be right that, when almost half of all 20 to 24 year-olds still live at home with their parents, we put care leavers in a position where they could see a typical £31 a week cut to their housing benefit at the age of 22.

[THE EARL OF LISTOWEL]

The cost of our amendment is estimated at around £50 million a year. The aim of the Bill is to extend provision of some key forms of support for care leavers until the age of 25. The logic behind the national offer is to extend the financial support that a care leaver can expect to receive up to that age. The cost of not introducing this amendment is far higher than the cost of its introduction. I beg your Lordships to allow the other place the opportunity to consider this national offer for care leavers. I beg to move.

Lord Watson of Invergowrie: My Lords, I have added my name in support of this amendment. I pay tribute to the work done by the noble Earl, Lord Listowel, and by the Children's Society, to which he referred. Many noble Lords have benefited from the briefing provided by that organisation and it is a matter that it cares very deeply about. We in your Lordships' House should also care deeply about it.

In July, the Government launched *Keep on Caring*, a strategy for cross-government provision. That was certainly welcome, not least because it contained the proposal to introduce a care-leaver covenant. The Government have characterised this as complementing the local offer that local authorities will be required to provide. However, it did not meet what we, and several organisations involved day-to-day in the delivery of social services to children, see as the need for a national offer delivered locally. I referred to this on the previous group of amendments. We believe that the national offer is necessary because of the patchwork provision that will be made by local authorities, so I would like to reinforce the arguments that I made on the earlier group.

I will not repeat the details of the national offer that the noble Earl outlined, but I want to refer to one or two aspects of it. There are four points, and the Minister, perhaps slightly unusually, replied to all four in a letter to the noble Earl, Lord Listowel, before the debate. The noble Earl has kindly circulated that letter, and it is helpful for us to know what the Government's position is. It is not exactly positive. None the less, it is helpful to have it outlined.

6 pm

The most important provision that the noble Earl mentioned is the council tax exemption for care leavers until the age of 25. Some local authorities have already begun to offer that, as the Minister mentioned in his letter, where he states:

"We believe this will encourage other local authorities to follow suit".

That is all very well, but I am clear that the reason that the Government are unwilling to have a national offer which would oblige all local authorities to follow suit in this and other aspects of the offer is cost. If the Government were to do that, they would have to tell local authorities that they understand that there are additional costs—the noble Earl, Lord Listowel, mentioned £50 million a year, which is not a great deal in the grander scheme of things—but I suspect that they are not willing to make that commitment because they do not want to find the money. They are saying to local authorities: "We have given you money. We do not tend to ring-fence much these days. If you want to

make council tax exemptions, that is up to you: go ahead and do it", so it is encouraged, but without any additional resources. Of course, if it is paid for out of local authority resources, something else has to fall by the wayside, so it could be one step forward and one step back for people in that local authority area.

I would like some detail about what North Somerset, Birmingham and Cheshire East have done and how they have accommodated that within their existing spend. That is an important point, because, as the Children's Society said:

"Almost half of local authorities in England fail to offer care leavers financial education support and debt advice",

leaving vulnerable young people at risk of falling into debt as they enter adult life. Everyone wants to avoid young people being hampered in that start. I had not heard of the noble Earl's example before, but we certainly do not want the corporate parents sanctioning the young people for whom they have legal responsibility.

I also highlight the importance of allowing care leavers to claim the higher rate of local housing allowance, because of the punitive financial effect that occurs when people reach the age of 22, when they switch from the local housing allowance single occupancy rate to the shared accommodation rate. That is effectively about £33 a week in subsidy for rent, which is a large amount for many people living on the borderline and cannot be pushed aside lightly.

Those two aspects, and the other two to which the noble Earl referred, which I shall not repeat, make the point eloquently. We need a national offer because we cannot rely on local authorities to have either the willpower or the spending power to do what they should for young people leaving care. With that in mind, I am happy to support the amendment and look forward to the contributions of other noble Lords and the Minister's response.

Baroness Bakewell of Hardington Mandeville: My Lords, I support the amendment, to which I have added my name, and am grateful to the noble Earl, Lord Listowel, for moving it. It covers a great deal of important ground. As I said earlier, I attended the briefing by the Children's Society last week, where some of the statistics provided were compelling. I agree with much of what has already been said and will have to amend my speech as I go along.

Often, care leavers moving into independent accommodation are managing their money for the first time. They find this very challenging due to the lack of financial education prior to reaching the age of 18. They have very low levels of income and often fall into debt.

As we have heard, working tax credits are not available to care leavers at a time when they have full responsibility for running a household for the first time. Some will have apprenticeships, but the apprenticeship rate is £3.40 an hour—no doubt based on the assumption that young people in apprenticeships live with their parents. This is hardly likely to keep care leavers out of debt.

A study undertaken by the Joseph Rowntree Foundation shows that, as the noble Lord, Lord Watson, said, 57% of care leavers have difficulty managing their money, and almost half of local authorities in

England fail to offer adequate financial education for care leavers. We have already heard about the exceptionally high number of care leavers being sanctioned under universal credit.

The amendment proposes a national offer of a range of support for care leavers to help them towards the age of 25. Some will not necessarily need that support for that long, but others will take time to get to grips with their responsibilities and budgetary control of limited resources. Council tax exemption until age 25 appears an easy way to assist. As we have heard, very few local authorities exempt care leavers from council tax. However, 1,800 young people are currently exempt from council tax where local authorities have recognised that additional help is needed for this vulnerable section of our community. The costs are not great to individual authorities. Cheshire East Council estimates that it costs it £17,000 per annum in total—a small cost compared to the relief it brings to young people struggling to get to grips with living independently.

The noble Earl, Lord Listowel, said that he had heard from Jack, and so did I. Jack is now a care leaver in his early 20s who was in care from four to 18. Jack felt that lots of money was thrown at looked-after children on activities—in his case, frequent trips to Alton Towers, clothing allowance and pocket money. He felt that that was far more money than a normal family could afford for their children. As a mother, I echo that. I could not afford to take my children on frequent trips to Alton Towers, although they would very much have liked that. He said that it cost more to keep him in care than to send him to Eton. When he left care, however, he did not even have enough money for the bus or heating. Jack's view, which I thought was very practical, was that his activity money would have been better used after he was 17 to fund driving lessons.

I share Jack's view that some of the money currently spent on looked-after children could be used to much better effect. I am conscious that we in this House may not impose additional financial burdens on the Government, but the Bill is starting here. We must find ways to support these young people who, as care leavers, are disproportionately represented in our prison and probation services. Reprofitting the money currently spent might be one way to achieve the aims of the amendment.

I support the noble Earl, Lord Listowel, in his amendment, and we on this side of the House are prepared to support him in a Division on this critical issue if necessary.

The Lord Bishop of Chester: My Lords, I add my strong support for the amendment, which was moved by the noble Earl with a mastery of succinctness and clarity across the issues he covered, backed up by the other noble Lords who spoke. There are powerful arguments for the amendment.

We have just been talking about the importance of relationship education and support. That is exactly what care leavers typically do not have—by definition, if you like. Think of the degree of support that your Lordships have had to give to your children at the age of 19 to 24 and beyond. I see some smiles on your Lordships' faces, and I could smile myself and put a price tag on it. It does not exactly run into millions of pounds, but it feels like it.

Giving a bit of extra help to those at that stage in their lives has a great deal to be said for it. Even if it cannot be given in all four areas set out by the Children's Society in its briefing, some, at least, should be considered very carefully—I add that it is a Church of England society. I think the work it has done here is a model of professionalism. My right reverend friend the Bishop of Durham spoke to this on Second Reading, but he cannot be here today and I am happy to pick up the baton from him.

We are dealing with a group of people who typically have very little support—support we almost assume that our own children need at that age—so we must help with anything we can do. Earlier, I heard the Minister say that the danger with having a minimum or national standard is that it would interfere with what is provided locally. It is not either/or; it is both/and, surely. I did hear somebody on the television just a few days ago saying there is an important role for the state. I agree with the Prime Minister on this, and I think that there is a role here for national standards and encouragement.

Wonder of wonders, Cheshire East has been mentioned. It is a Conservative-run authority, blazing a trail, but should we leave it to a postcode lottery so that some authorities do this and some do not? That is very discouraging if you see it in those terms. While this is led by local authorities and a local offer, it does seem to me there is a strong reason for having a certain degree of national offer and national minimum standards. I think that is the spirit behind this amendment, and I strongly support it.

Lord Warner: My Lords, I support the amendment. However, I would like to put a very specific question to the Minister to which I would welcome a reply. The Minister will recall that, when you stand at the Dispatch Box, you speak for the Government, not just your department. When this Bill began, there was another Government he was speaking for, but he is now speaking for a new Government. That new Government have expressed great concern about helping those who are just getting by. This group of people are barely getting by and in some cases are not getting by. What this amendment does is provide a proposition which this Government—not the previous Government—need to consider. Can the Minister say whether this issue has been put to the new Ministers in the Department for Work and Pensions and DCLG? It would be very helpful to know whether this Government have considered this issue at a ministerial level and what their view is.

Baroness Lister of Burtersett: My Lords, what I would like to say follows on very well from the noble Lord's very pertinent question. I am happy to support this amendment, which was moved so ably by the noble Earl, Lord Listowel.

A recent Joseph Rowntree Foundation document called *We Can Solve Poverty in the UK*, which was the product of a long and wide consultation, states:

"The prospects for young people leaving local authority care should be an overarching priority for government. Despite positive policy and legal developments, they continue to face unacceptably high risks of destitution and poverty".

[BARONESS LISTER OF BURTERSETT]

Destitution in 21st-century Britain for an extremely vulnerable group of young people really is unacceptable. As the noble Lord said, they are not getting by. In many circumstances, it is simply not possible for them to get by.

This amendment addresses some of the key policy drivers behind these very serious risks. The Government are rightly requiring local authorities to promote the best interests of care leavers up to the age of 25, yet their own policies fail to do so. I can see no justification for what surely must constitute double standards. There is a degree of acknowledgement of the arguments put earlier during the process of the Bill and of this case in *Keep on Caring*, which is very welcome, but I urge the Minister to go further today.

As already noted, no doubt cost will be cited. However, the costs are not prohibitive. Also, this needs to be considered in the context of another Joseph Rowntree Foundation report regarding the costs of poverty. It calculated that around two-thirds of total local authority expenditure on children's services is attributable to poverty-related problems.

At earlier stages of this Bill, I quoted yet another Joseph Rowntree Foundation report, which looked at the links between poverty and the abuse and neglect of children. I quoted that report, which said:

"Poverty often slides out of focus in policy and practice".

This amendment puts poverty back into focus and it addresses the severe poverty experienced by many extremely vulnerable care leavers.

6.15 pm

Lord Nash: My Lords, I am grateful to all noble Lords for this amendment and their contributions to this debate. The amendment would introduce a new clause setting out a national offer for care leavers. The national offer would first comprise an exemption from council tax until care leavers reach the age of 25. Secondly, it would extend care leavers' exemption from the shared accommodation rate in housing benefit to the age of 25. Thirdly, it would amend the eligibility rules so that care leavers aged under 25 are able to claim working tax credits. Fourthly, it would limit the application of benefit sanctions to care leavers under universal credit. I understand the intention behind this amendment and I agree that it is important that care leavers have the financial support they need to lead independent, successful lives. However, I am not convinced that this amendment is the best way to provide that financial support. I will deal with these issues in turn.

We believe that local authorities are best placed to make decisions about council tax support schemes. Instead of mandating exemptions from the centre, we have provided local authorities with the flexibility to design their own support schemes to meet local need. This is about giving local freedom so that resources can be spent in the best way. We do not want to give blanket exemptions or discounts because of the impact this will have on local authority revenues and other council tax payers who may equally struggle to pay the tax. The latest briefing from the Children's Society shows that more local authorities are deciding to

exempt care leavers from paying council tax. North Somerset, Birmingham, Wolverhampton, Cheshire East and Milton Keynes have all introduced council tax exemptions in the last few months. We expect that the local offer will drive more local authorities to follow suit.

Equally, however, local authorities may decide that it is more appropriate to provide care leavers with other forms of financial support. Some local authorities, for example, provide care leavers with free travel passes or with help to buy clothes for interviews. These are all clear examples of local authorities taking their role as corporate parents seriously.

I recognise the intention behind extending care leavers' exemption from the shared accommodation rate until the age of 25. As the noble Earl will be aware, discretionary housing payments continue to be available by local authorities which provide support for those individuals who need additional financial help with housing costs. The Government have already committed £870 million in discretionary housing payment funding over the next five years. Your Lordships will appreciate that that is a significant amount of money to help those who are vulnerable and who require additional help with housing costs. However, we have made a commitment in the care leaver strategy to work with the Department for Work and Pensions to explore the costs and benefits of an extension to age 25, as proposed in the amendment. We do not currently have data that tell us how many care leavers would be affected by this change and therefore I do not believe that it would be appropriate to make a change to the law until this issue has been reviewed further. As part of that, we have asked the Children's Society to provide some real-life case studies to illustrate the impact of moving to the shared accommodation rate.

With regard to amending eligibility rules so that care leavers aged under 25 are able to claim working tax credit, noble Lords may be aware that universal credit will replace the current system of means-tested working-age benefits with a new, simple, streamlined payment. Under the new arrangements, the requirement for workers to be aged 25 or over to be entitled to claim the working tax credit element of universal credit will not apply.

The noble Earl said that care leavers under 25 will still be disadvantaged when universal credit is introduced. That is not consistent with the information provided by the DWP, which has been clear that age-related conditions will not be applied to universal credit. I would be happy to meet the noble Earl to discuss this point further.

Additionally, as part of the national rollout for universal credit, the Department for Work and Pensions will ensure that care leavers are able to make a claim to universal credit in advance of leaving care. They will also have access to universal credit advances where they need help to manage until they receive their first payment.

We recognise the impact that benefit sanctions can have on care leavers' lives and we share noble Lords' wish for sanctions on care leavers to be reduced. Jobcentre Plus has introduced a marker that allows care leavers

to be identified on the system and receive additional help. We want to ensure that as many care leavers as possible benefit from the support that is available. We do not think it is in care leavers' interests to remove them entirely from the requirements expected of other jobseekers. However, we already have the flexibility to tailor requirements based on the circumstances of each individual.

The purpose of sanctions is to encourage claimants to comply with reasonable requirements, developed in agreement with their job coach, so as to help them move into and prepare for work. Reducing sanctions on care leavers is therefore best achieved through closer working between local authority leaving care teams and work coaches at Jobcentre Plus. There are many examples of effective local protocols that can help care leavers to understand the conditions around the receipt of benefits. These include the Barnet hub model, which we promoted in our care leaver strategy published in July. I believe, however, that such protocols are best designed locally.

I understand what noble Lords are trying to achieve through Amendment 13. I agree that it is vital that care leavers have the financial resources and support that they need. However, I think that we need to balance this with making sure that we do not unintentionally lower our aspirations for care leavers. Although noble Lords are right to say that care leavers are vulnerable groups, I believe that we would do them a disservice if we did not encourage them into work, as we do with other young people. The real key to helping care leavers is to promote their life chances by supporting them in accessing and staying in education, employment or training in the way that Jobcentre Plus already does, or through the 2nd Chance learning scheme or priority access to the Work Programme. More help and support will be available to care leavers through the new youth obligation scheme and expanded universal support.

I met the noble Earl, Lord Listowel, earlier today, which helped greatly in clarifying and understanding his issues of concern regarding benefit sanctions. I would like to meet him again to discuss his concerns about this further but, before doing so, I will speak to Ministers to see whether there is scope to apply a less stringent sanctions regime for care leavers.

I would also like to draw attention to the care leaver covenant, which will provide a way for government at the national level to make a commitment to support care leavers. Central government departments will be able to set out and update their distinct offer to care leavers. I believe that this will be the most appropriate way to clarify the role of central government departments in supporting care leavers, rather than setting out a "national offer" in legislation. We will announce more details about how departments can sign up to the covenant in the new year.

The noble Lord, Lord Warner, asked about the new Government's intentions. Noble Lords will be aware that, as part of the Keep on Caring strategy, we are considering our care leavers strategy and how to ensure that care leavers have the financial support they need. I remind noble Lords that this is a programme for the whole Parliament and we will continue to consider

these issues. In addition, as the noble Lord will be aware, our new Secretary of State is prioritising social mobility, and she has recognised that improving the outcomes of care leavers is an important part of that agenda.

Finally, many noble Lords have talked about Jack's experiences while in care. My officials have also heard from Jack and have organised some work experience for him in the department. We continue to talk to him and to listen to his experiences.

In the light of the points I have made, I hope that the noble Earl will feel reassured enough to withdraw his amendment.

The Earl of Listowel: My Lords, I thank the Minister for his reply and I thank all noble Lords who have taken part in the debate: the noble Lord, Lord Watson, the noble Baroness, Lady Bakewell, the right reverend Prelate the Bishop of Chester and other noble Lords. I appreciate their contributions.

I am grateful to the Minister for his interest, his sympathy and his offer of a meeting, particularly to discuss sanctions. However, I am most concerned that this amendment may be lost if not agreed today.

Listening to the debate, I particularly thought of the recent report from CoramBAAF which looked at the rates of teenage pregnancy among young women in care and leaving care. It pointed out that they are three times more likely to become pregnant and that, when they do, they are more likely to keep the child because they are looking for someone to love them. They want to give birth to and hold on to the child and have the love of the child. In this case we may often be talking about young families coming out of care as well.

We have to do more to break the cycle of young people leaving care and so often falling into debt and financial hardship, not being able to make the most of the opportunities that the worlds of training and work have to offer. This is fundamentally about fairness and pulling out all the stops to help care leavers achieve their full potential.

Before I conclude, I want to say how glad I am to hear that the Minister has found a work placement for Jack. I look forward to hearing how that develops. However, I am afraid that I must beg leave to ask the opinion of the House.

6.26 pm

Division on Amendment 13

Contents 179; Not-Contents 188. [The Tellers for the Not-contents reported 188 votes; the Clerks recorded 187 names.]

Amendment 13 disagreed.

Division No. 1

CONTENTS

Alderdice, L.	Bassam of Brighton, L.
Alton of Liverpool, L.	Beecham, L.
Anderson of Swansea, L.	Beith, L.
Andrews, B.	Benjamin, B.
Bakewell of Hardington	Best, L.
Mandeville, B. [Teller]	Blackstone, B.
Barker, B.	Blood, B.

Bowles of Berkhamsted, B.
 Bragg, L.
 Brennan, L.
 Brooke of Alverthorpe, L.
 Brookman, L.
 Bruce of Bennachie, L.
 Burt of Solihull, B.
 Campbell of Pittenweem, L.
 Campbell-Savours, L.
 Carter of Coles, L.
 Chester, Bp.
 Chidgey, L.
 Clark of Windermere, L.
 Clement-Jones, L.
 Cohen of Pimlico, B.
 Collins of Highbury, L.
 Corston, B.
 Cotter, L.
 Crisp, L.
 Cromwell, L.
 Desai, L.
 Dholakia, L.
 Docey, B.
 Drake, B.
 Dubs, L.
 Elder, L.
 Elystan-Morgan, L.
 Farrington of Ribblesdale, B.
 Faulkner of Worcester, L.
 Featherstone, B.
 Finlay of Llandaff, B.
 Foster of Bath, L.
 Foster of Bishop Auckland, L.
 Foulkes of Cumnock, L.
 Fox, L.
 Gale, B.
 German, L.
 Glasgow, E.
 Goddard of Stockport, L.
 Golding, B.
 Grantchester, L.
 Greaves, L.
 Grey-Thompson, B.
 Grocott, L.
 Hamwee, B.
 Hannay of Chiswick, L.
 Harris of Haringey, L.
 Harris of Richmond, B.
 Haworth, L.
 Hayter of Kentish Town, B.
 Healy of Primrose Hill, B.
 Henig, B.
 Hollick, L.
 Hollins, B.
 Howarth of Newport, L.
 Howe of Idlicote, B.
 Hoyle, L.
 Humphreys, B.
 Hunt of Chesterton, L.
 Hunt of Kings Heath, L.
 Hussain, L.
 Hussein-Ece, B.
 Hylton, L.
 Janke, B.
 Jolly, B.
 Jones, L.
 Jones of Cheltenham, L.
 Jones of Whitchurch, B.
 Judd, L.
 Kennedy of Southwark, L.
 Kerslake, L.
 Kidron, B.
 King of Bow, B.
 Kinnoull, E.
 Kirkhill, L.
 Kirkwood of Kirkhope, L.
 Knight of Weymouth, L.
 Kramer, B.

Lawrence of Clarendon, B.
 Layard, L.
 Lea of Crondall, L.
 Lee of Trafford, L.
 Leeds, Bp.
 Lennie, L.
 Lester of Herne Hill, L.
 Liddle, L.
 Lipsey, L.
 Lister of Burtsett, B.
 Listowel, E.
 Livermore, L.
 Low of Dalston, L.
 McAvo, L.
 McIntosh of Hudnall, B.
 McKenzie of Luton, L.
 MacLennan of Rogart, L.
 McNally, L.
 Marks of Henley-on-Thames, L.
 Masham of Ilton, B.
 Massey of Darwen, B.
 Maxton, L.
 Meacher, B.
 Morris of Handsworth, L.
 Murphy of Torfaen, L.
 Newby, L.
 Northover, B.
 Nye, B.
 O'Neill of Bengarve, B.
 Paddick, L.
 Palmer, L.
 Patel of Bradford, L.
 Pinnock, B.
 Quin, B.
 Radice, L.
 Ramsay of Cartvale, B.
 Ramsbotham, L.
 Randerson, B.
 Redesdale, L.
 Rennard, L.
 Roberts of Llandudno, L.
 Rooker, L.
 Rosser, L.
 Rowe-Beddoe, L.
 Sawyer, L.
 Scott of Needham Market, B.
 Sharkey, L.
 Sheehan, B.
 Sherlock, B.
 Shipley, L.
 Shutt of Greetland, L.
 Simon, V.
 Smith of Basildon, B.
 Soley, L.
 Stephen, L.
 Stevenson of Balmacara, L.
 Stone of Blackheath, L.
 Stoneham of Droxford, L.
 Storey, L.
 Suttie, B.
 Taylor of Bolton, B.
 Thomas of Gresford, L.
 Thurso, V.
 Tonge, B.
 Tope, L.
 Touhig, L.
 Trees, L.
 Triesman, L.
 Tunnicliffe, L. [Teller]
 Tyler, L.
 Tyler of Enfield, B.
 Uddin, B.
 Wallace of Saltaire, L.
 Wallace of Tankerness, L.
 Walmsley, B.
 Warner, L.
 Warwick of Undercliffe, B.

Watkins of Tavistock, B.
 Watson of Invergowrie, L.
 West of Spithead, L.
 Wheeler, B.
 Whitaker, B.
 Wigley, L.

Wills, L.
 Wood of Anfield, L.
 Wigglesworth, L.
 Young of Hornsey, B.
 Young of Old Scone, B.

NOT CONTENTS

Ahmad of Wimbledon, L.
 Anelay of St Johns, B.
 Arbuthnot of Edrom, L.
 Arran, E.
 Ashton of Hyde, L.
 Astor of Hever, L.
 Attlee, E.
 Baker of Dorking, L.
 Balfe, L.
 Bates, L.
 Berridge, B.
 Bertin, B.
 Bew, L.
 Black of Brentwood, L.
 Blackwell, L.
 Blencathra, L.
 Bloomfield of Hinton
 Waldrist, B.
 Borwick, L.
 Bourne of Aberystwyth, L.
 Bowness, L.
 Brady, B.
 Bridgeman, V.
 Bridges of Headley, L.
 Brougham and Vaux, L.
 Browne of Belmont, L.
 Byford, B.
 Caithness, E.
 Callanan, L.
 Carrington of Fulham, L.
 Cathcart, E.
 Cavendish of Furness, L.
 Chalker of Wallasey, B.
 Chisholm of Owlpen, B.
 Colwyn, L.
 Cooper of Windrush, L.
 Cope of Berkeley, L.
 Cormack, L.
 Courtown, E. [Teller]
 Couttie, B.
 Craigavon, V.
 Crickhowell, L.
 De Mauley, L.
 Deben, L.
 Denham, L.
 Dixon-Smith, L.
 Dobbs, L.
 Dunlop, L.
 Eaton, B.
 Eccles, V.
 Eccles of Moulton, B.
 Elton, L.
 Empey, L.
 Evans of Bowes Park, B.
 Fairfax of Cameron, L.
 Fall, B.
 Farmer, L.
 Fink, L.
 Finkelstein, L.
 Flight, L.
 Fookes, B.
 Framlingham, L.
 Freeman, L.
 Freud, L.
 Gadhia, L.
 Gardiner of Kimble, L.
 Gardner of Parkes, B.
 Garel-Jones, L.
 Geddes, L.

Gilbert of Panteg, L.
 Glendonbrook, L.
 Goldie, B.
 Goodlad, L.
 Greenway, L.
 Griffiths of Fforestfach, L.
 Hague of Richmond, L.
 Hailsham, V.
 Hamilton of Epsom, L.
 Harding of Winscombe, B.
 Harris of Peckham, L.
 Hay of Ballyore, L.
 Hayward, L.
 Helic, B.
 Henley, L.
 Heyhoe Flint, B.
 Higgins, L.
 Hodgson of Abinger, B.
 Hodgson of Astley Abbots,
 L.
 Holmes of Richmond, L.
 Hooper, B.
 Horam, L.
 Howard of Lympne, L.
 Howard of Rising, L.
 Howe, E.
 Howell of Guildford, L.
 Hunt of Wirral, L.
 Inglewood, L.
 James of Blackheath, L.
 Jenkin of Kennington, B.
 Jopling, L.
 Keen of Elie, L.
 King of Bridgewater, L.
 Kirkham, L.
 Kirkhope of Harrogate, L.
 Lang of Monkton, L.
 Lansley, L.
 Lawson of Blaby, L.
 Leigh of Hurley, L.
 Lexden, L.
 Lingfield, L.
 Liverpool, E.
 Livingston of Parkhead, L.
 Lothian, M.
 Lupton, L.
 Lyell, L.
 MacGregor of Pulham
 Market, L.
 McGregor-Smith, B.
 McInnes of Kilwinning, L.
 McIntosh of Pickering, B.
 Magan of Castletown, L.
 Maginnis of Drumglass, L.
 Marlesford, L.
 Mawson, L.
 Mobarik, B.
 Mone, B.
 Montrose, D.
 Morris of Bolton, B.
 Moynihan, L.
 Naseby, L.
 Nash, L.
 Neville-Jones, B.
 Neville-Rolfe, B.
 Nicholson of Winterbourne,
 B.
 Noakes, B.
 Northbrook, L.

Norton of Louth, L.
 O’Cathain, B.
 O’Shaughnessy, L.
 Patten, L.
 Pidding, B.
 Popat, L.
 Porter of Spalding, L.
 Rana, L.
 Rawlings, B.
 Renfrew of Kaimsthorpe, L.
 Ridley, V.
 Risby, L.
 Robathan, L.
 Rock, B.
 Sassoon, L.
 Seacombe, B.
 Selborne, E.
 Selsdon, L.
 Shackleton of Belgravia, B.
 Sharples, B.
 Sheikh, L.
 Sherbourne of Didsbury, L.
 Shields, B.
 Shinkwin, L.
 Skelmersdale, L.
 Smith of Hindhead, L.
 Somerset, D.

Spicer, L.
 Stedman-Scott, B.
 Stowell of Beeston, B.
 Stroud, B.
 Sugg, B.
 Suri, L.
 Taylor of Holbeach, L.
 [Teller]
 Tebbit, L.
 Trenchard, V.
 Trimble, L.
 True, L.
 Tugendhat, L.
 Ullswater, V.
 Vere of Norbiton, B.
 Wakeham, L.
 Waldegrave of North Hill, L.
 Wasserman, L.
 Waverley, V.
 Wei, L.
 Wellington, D.
 Wheatcroft, B.
 Wilcox, B.
 Willetts, L.
 Williams of Trafford, B.
 Young of Cookham, L.
 Younger of Leckie, V.

6.39 pm

Clause 3: Advice and support on request

Amendment 14

Moved by Lord Nash

14: Clause 3, page 3, line 44, leave out “on request”

Lord Nash: My Lords, I will speak first to Amendments 14, 15, 16 and 18.

In Committee, I was pleased at the support Clause 3 received and to see that the importance of making available the support of a personal adviser to all care leavers was widely recognised. In most family situations support tapers away as children and young people get older and gain more independence. The support we provide for 16 and 17 year-old care leavers clearly needs to be greater than it would be for the majority of 21 to 25 year-olds, and the legislation should follow that approach.

At the same time, we know there are some care leavers whose lives remain chaotic during their early 20s and who need quite intense support to bring stability to their lives, and others who will need support on specific things at specific times—for example, on release from prison, if they have a child, or if they lose a tenancy. In Committee, we spent some time considering whether making a personal adviser available on request was adequate to meet the needs of these young people, and whether if support were once declined there would be subsequent access to it. We recognise that no care leaver should feel that they cannot receive support between the ages of 21 and 25 because they had perhaps indicated at an earlier stage that it was not needed. In light of that, I am proposing amendments to Clause 3(7) to expressly clarify that local authorities must proactively offer support to every care leaver at least every 12 months. I trust noble Lords will welcome these amendments.

The Deputy Speaker (Lord Brougham and Vaux) (Con): I should advise the House that if Amendment 18, is agreed to I cannot call Amendment 19 due to pre-emption.

Lord Ramsbotham: My Lords, I rise to move Amendments 17 and 19. The purpose of Amendment 17 is both to ask to ask the Minister to clarify the intention behind subsection 3(b) of new Section 23CZB and to highlight a potential loophole which could risk local authorities opting out of their duties to former relevant children. It would appear that the intention behind that subsection is to enable a local authority to cancel the appointment of a personal adviser if at any time a former relevant child says that they no longer want one. However, the wording of the subsection is ambiguous. The phrase “if earlier” leaves open the possibility that a local authority might interpret it in a way that would enable it to refuse advice and support to a former relevant child who had previously said that they did not want a personal adviser but at a later stage requested advice and support. This opens another possible loophole of local authorities requesting that former relevant children sign a form on leaving care at 18 to say that they no longer need support. Would the Minister therefore be kind enough to clarify the Government’s intention and resolve any possible ambiguity in the wording of the legislation?

My Amendment 19 is made completely unnecessary by government Amendment 18, and so I propose not to press it.

Lord Nash: As I understand it, the noble Lord is asking us to clarify that when we say that care leavers will have the right to this every year, they will have the right to it every year and there is no way that local authorities can get out of it. That is our intention, and if it is not clear in the legislation then we will change it. I think I can give the noble Lord the assurance he needs: we do not think there should be any way that local authorities should invite an 18 year-old to contract out of this right.

Lord Ramsbotham: I do not wish to prolong this, but it is practitioners who have raised this question with me because they are unclear. Although young people have the right every year, it is an opportunity basis that they are considering.

The Lord Bishop of Chester: My Lords, I thank the Government very much for the change they are bringing in—

The Deputy Speaker: The Minister has responded.

The Lord Bishop of Chester: I thought the Minister was just making a clarification.

Lord Nash: I am sure that we can clarify this. I myself felt that the idea someone would have a one-off chance was not a good one. Therefore, as I said, the intention is that they will get a regular chance—at least every year—to change their mind if they have previously said no. I do not think we should allow any way for anybody to get out of that. I am happy to talk to the noble Lord, Lord Ramsbotham, outside the Chamber to clarify that. I am sure that we can resolve this.

6.45 pm

Lord Ramsbotham: I am grateful to the Minister. I am sure that this is capable of resolution. It just seemed an irritant rather than a major issue, but one which it would be unwise to let go. Therefore, I will not press my amendment.

Amendment 14 agreed.

Amendments 15 and 16

Moved by Lord Nash

15: Clause 3, page 4, line 5, leave out “requests” and insert “informs the local authority that he or she wishes to receive”

16: Clause 3, page 4, line 6, leave out “following duties” and insert “duties provided for in subsections (3) to (6)”

Amendments 15 and 16 agreed.

Amendment 17 not moved.

Amendment 18

Moved by Lord Nash

18: Clause 3, page 4, leave out lines 26 to 30 and insert—

“(7) Where a former relevant child to whom this section applies is not receiving advice and support under this section, the local authority must offer such advice and support—

(a) as soon as possible after he or she reaches the age of 21, and

(b) at least once in every 12 months.”

Amendment 18 agreed.

Amendment 19 not moved.

Clause 4: Duty of local authority in relation to previously looked after children

Amendment 20

Moved by Lord Nash

20: Clause 4, page 5, leave out line 28 and insert—

“(a) any person who has parental responsibility for the child,”

Lord Nash: My Lords, in Committee we promised the noble Lord, Lord Watson, that we would consider his amendment in Grand Committee to ensure that the current drafting of Clause 4 fully captures those with parental responsibility where the child has left care under special guardianship or child arrangements orders. Following further consideration, the Government have decided an amendment is necessary to Clause 4, and I am grateful to the noble Lord, Lord Watson, for bringing this to our attention—I am rather disappointed that he is not here to hear me say that, but I hope the noble Lord, Lord Hunt, will pass on my thanks.

The amendment will make it clear to local authorities in England that they must make advice and information available to any person who has parental responsibility for a previously looked-after child for the purpose of discharging their duty to promote their educational achievement. Unlike adoption, where only the adoptive parents have parental responsibility, parental responsibility in respect of children named in special guardianship and child arrangements orders may be shared with the child’s birth parent or parents. This amendment is therefore important to ensure that all those with parental responsibility are not excluded.

I would like also to speak to government Amendments 21, 24 and 27, which are technical amendments to Clauses 4 to 6 that will ensure that children who were previously looked after and adopted under the Adoption Act 1976 are also within the scope of the new duty on local authorities and schools to promote their educational achievement. These “older” children will be in secondary education, and they too should have access to the virtual school head and the designated teacher. I hope that noble Lords will accept these government amendments.

Before hearing what noble Lords have to say on other amendments, perhaps it would be helpful to noble Lords, and particularly to the noble Baroness, Lady King, if I say that the Government will table an amendment to the Bill in the other place to bring children adopted from care outside England within the scope of Clauses 4 to 6.

Baroness Walmsley (LD): My Lords, it was my intention to speak to Amendments 22, 23, 25, 26 and 28 in my name and that of the noble Baroness, Lady King of Bow, and other noble Lords. However, I am delighted to hear what the Minister has just said. To explain to other noble Lords who may not be familiar with the effect of these amendments, I should say that they refer to the educational entitlements of children adopted from overseas to make them equal to those of children adopted from this country. I must declare an interest in this subject because I have a much-loved adopted Chinese granddaughter, although she would not benefit from these amendments since she and her family live abroad.

From a peak of 25,000 adoptions a year in the mid-1970s, the number of adoptions fell in England to only 3,000 in 2011. But the new focus on adoption of the previous Government and of the current Government has made a very big difference. The number of adoptions is going up again, and they are extremely resilient, as shown by a certain amount of research. Only 3% of them break down, which is less than those where children are put under special guardianship. In acknowledging the need for the numbers of adoptions to grow, the application has been made easier and shorter. However, before those reforms took place, many would-be adopters turned away by local authorities had to adopt internationally if they were to have a family, particularly if they wished to adopt an infant. A number of international adopters, including my son, would willingly have adopted in the UK but were turned away, sometimes because of their ethnicity.

There used to be a view that children adopted from abroad did not come from the care system in their country. That may have been the case some time ago but that has changed. Indeed, Martin Narey, who had previously claimed that that was so, has changed his mind in view of changes in all those countries. Most of the children come from care in the countries from which they are adopted. That means that they have exactly the same traumatic experiences that children adopted from care in this country have, and therefore they have exactly the same needs. Those children have already benefited from several elements of the adoption support fund, but until today they had not benefited from the educational advantages that were given to

children adopted from this country. So I am delighted that the Minister has indicated in what he has just said that he has accepted that those children need the same advantages in education. We are talking about children who are all British nationals, all with a similar experience of neglect and abuse and all adopted from care. The only difference is that in some cases internationally adopted children might also have experienced deeply inadequate medical care and malnutrition in their country of birth, so actually they may be worse off than children adopted from care in this country.

The Minister suggested that amendments would be tabled when this Bill goes to another place, so I look forward to seeing that. That will remedy the fact that we have up to now condemned a very small number of British children who have suffered neglect and abuse to lives much less successful than they might have been. I hope that will now change. I thank the Minister and the noble Baroness, Lady King of Bow, for suggesting these amendments.

Baroness King of Bow (Lab): My Lords, I do not wish to detain the House on this amendment—I will detain the House on a later amendment instead—but I want to sincerely thank the Minister for the excellent news that he has brought. As the noble Baroness said, it is only a small number of British children, but they are British children. As an adoptive parent, however you adopt your child and wherever your child comes from, you expect them to have the same life chances in Britain, because that is, I hope, what Britain is about.

Lord Ramsbotham: My Lords, my Amendment 29 seeks to use Clause 8 to mitigate the possible impact of provisions elsewhere in the Bill on a group of children described by the phrase,

“there being no person who has parental responsibility for the child”—

in other words, looked-after children. I refer in particular to looked-after children in custody, of whom the noble Lord, Lord Laming, in his report, estimated that there were approximately 400 at any one time, 100 of whom were on remand. Although this is not in itself a large number, it adds up to slightly less than half the numbers of children currently in custody. This ratio accentuates the need to consider their position.

Currently, all children remanded into custody are automatically granted looked-after status for the duration of their time on remand. Children in care retain this status throughout their custody. However, in Grand Committee the Minister suggested that this could be removed by other clauses in the Bill. Looked-after children in custody show greater levels of mental health needs than other incarcerated children, need greater levels of emotional and practical support, and respond less well to behavioural incentive schemes and resettlement planning. As a group, they already face problems in engaging local authority support, and it would appear to be at best counterproductive to enable local authorities to opt out of their duty to support those looked-after children who happen to be in custody. This is yet another cross-government matter, and I wonder whether the Department for Education has discussed the possible effect of this with the Ministry of Justice, which aims to reduce reoffending.

Lord Hunt of Kings Heath (Lab): My Lords, I, like my noble friend, am very grateful for government Amendment 20, which we fully support. The noble Baroness, Lady Walmsley, and my noble friend Lady King spoke eloquently about children adopted from care outside England who are now resident in England, and on the need for educational equality. We, too, very much welcome the Minister's intention to bring forward amendments in the other place. Obviously, they will come back to your Lordships' House in the new year.

The noble Lord, Lord Ramsbotham, made a very telling point about the particular challenges of looked-after children in custody. At heart, it is a question of whether the Minister's department's intention is consistent with that of the Ministry of Justice. It would be very helpful if, between now and Report, the Minister would enable some discussions to take place with the noble Lord, Lord Ramsbotham, just to make sure that there is absolute consistency, because I very much take the point that he raised.

The Earl of Listowel: My Lords, I join in welcoming government Amendment 20, which seems to fill an important loophole. In passing, as I did not have an opportunity in the previous grouping, I also thank the Minister for his previous amendments, which are important and which we raised in Committee. As is so often the case, the Minister listens and takes action, and I am grateful to him when he does so, as he did earlier and in this case.

Lord Nash: My Lords, I thank noble Lords for their interventions on Amendments 22, 23, 25 and 26, which concern Clauses 4 to 6 about promoting the educational achievement of previously looked-after children. I am grateful to the noble Baronesses, Lady King and Lady Walmsley, and the noble Lord, Lord Alton of Liverpool, for these amendments, which would require local authorities and schools to also promote the educational achievement of children adopted from care outside England.

Government policy has been clearly focused on continuing to support very vulnerable children who were looked after by our care system before starting new lives through, for example, adoption. Making a commitment to continue to help them, and the wonderful parents and guardians who give them a secure and loving home, remains a top priority. Support to succeed in education is an important element of this because we know that there is an attainment gap to address.

I understand that some children adopted from outside England will have been in an equivalent form of care prior to adoption and that they, too, are vulnerable. This is in addition to moving to a new country and a new culture. The Government have acknowledged this by extending access to the adoption support fund to these children and their families so that they, too, can get access to much-needed therapeutic services. The Government would like to do more for these children and agree with noble Lords that extending the remit of Clauses 4 to 6 to require local authorities and schools to also promote their educational achievement would be a positive step.

There are, however, a number of important practicalities to consider: for example, how we define eligibility and how a parent proves eligibility. This is

[LORD NASH]

because there is much variation between the care systems of other countries. I hope that noble Lords will agree that it is important that we ensure that the eligibility criteria closely match the criteria for children in this country in order to come within the scope of Clauses 4 to 6. As I said, the Government will table a government amendment to this Bill in the other place to bring children adopted from care outside England within the scope of Clauses 4 to 6.

I am also grateful to noble Lords for their Amendment 28, which proposes a new clause to extend existing educational entitlements given to previously looked-after children in England to children adopted from care outside England. These entitlements include priority school admission in the early years and the pupil premium plus. None of these entitlements is provided for in primary legislation so it would not be appropriate to consider this amendment for inclusion in the Bill. The Government will, however, give full consideration to the position of these children when reviewing these policies.

7 pm

Amendment 29, tabled by the noble Lord, Lord Ramsbotham, concerns the important issue of parental responsibility for children who would otherwise be at risk of harm. I appreciate the sentiment behind this amendment, which intends to require local authorities to seek care orders under Section 31 of the Children Act 1989 for all children who are suffering or are likely to suffer significant harm and for whom nobody holds parental responsibility. The noble Lord rightly wishes to ensure that such children are cared for and protected under Section 31 of the Children Act 1989. I believe that such support can be provided under current arrangements.

An example of one such group would be children being accommodated by a local authority under Section 20 of the Children Act. The local authority will have legal responsibility for the child and will be able to do anything necessary to safeguard and promote the welfare of that child. This also grants the child entitlement to the same statutory safeguarding and care support services as any other looked-after child, including those being supported under a Section 31 care order. This means that local authorities have the same duties towards them to draw up and review their care plan, for which they must appoint an IRO. Whether or not a child is on a care order under Section 31 or accommodated under Section 20, the local authority must safeguard and promote the welfare of those children and in particular promote their educational achievement. They must also, for example, make them aware of their right, if they want it, to independent advocacy or an independent visitor.

We must bear in mind that courts do not make care orders lightly: before they do so a local authority has to show that a child is suffering or likely to suffer significant harm. It is always at the discretion of the local authority as to whether it feels it necessary to apply for a Section 31 care order for a child. On the point made by the noble Lord, Lord Ramsbotham, and referred to by the noble Lord, Lord Hunt, about clarifying the position with the MoJ, I would be delighted to meet the noble Lord, Lord Ramsbotham, to discuss

that further. In conclusion, I hope on the basis of what I have said that noble Lords will not press their amendments.

Amendment 20 agreed.

Amendment 21

Moved by Lord Nash

21: Clause 4, page 6, line 9, after “by” insert “section 72(1) of the Adoption Act 1976 or”

Amendment 21 agreed.

Amendment 22 not moved.

Clause 5: Maintained schools: staff member for previously looked after pupils

Amendment 23 not moved.

Amendment 24

Moved by Lord Nash

24: Clause 5, page 6, line 40, after “by” insert “section 72(1) of the Adoption Act 1976 or”

Amendment 24 agreed.

Amendment 25 not moved.

Clause 6: Academies: staff member for looked after and previously looked after pupils

Amendment 26 not moved.

Amendment 27

Moved by Lord Nash

27: Clause 6, page 8, line 16, after “by” insert “section 72(1) of the Adoption Act 1976 or”

Amendment 27 agreed.

Amendment 28 not moved.

Clause 8: Care orders: permanence provisions

Amendment 29 not moved.

Amendment 30

Moved by Lord Hunt of Kings Heath

30: Clause 8, page 8, line 42, leave out from “child’s” to end of line 2 on page 9 and insert “or a person with parental responsibility for the child;

- (ii) long-term foster care, with a connected person, existing foster carer or other person;
- (iii) adoption, with an existing foster carer, foster to adopt carer or other person;
- (iv) long-term care not within sub-paragraph (i), (ii) or (iii);”

Lord Hunt of Kings Heath: My Lords, I will speak to my own amendment and perhaps come back when we have had a debate on the other amendments in the group. This takes us back to an interesting discussion that we had in Committee about fostering and the risk that fostering will be placed in a lower hierarchical category in relation to the provisions of the Bill. Let me say at once—if the Minister is paying attention—that I welcome the issue of the clause, looking at the long-term needs of the child, and developing a plan that will assess their current and future needs and a permanent plan to meet those needs. We all agree that this clause places these issues at the forefront of decision-makers' minds when assessing the care plan. Clearly, it is important to ensure that all permanent options benefit from this clause. That is why all options should be written explicitly into the Bill.

What is concerning, particularly to those involved in fostering and the fostering network, is whether we can get clarity in the law to avoid some options, particularly adoption, being seen as more important than others in a hierarchy of care. I do not at all underestimate the importance of the need to encourage more adoptions. I have no doubt that this is the right way to go. But it should not be at the expense of prioritising adoptions over fostering.

A legal framework is in place. A legal definition for long-term foster care was introduced subsequent to the passing of the Children and Families Act 2014. The Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015 amended the Care Planning, Placement and Case Review (England) Regulations 2010 by providing for the first time a legal definition of long-term foster care and setting out the conditions that must be met. This step rightly strengthened the importance of foster care as a permanent option for children and young people in care.

As the Government have placed long-term foster care on a legal footing, the opportunity should be taken in this legislation to include it as a permanent option. *The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review June 2015* includes reference to the range of options for permanence and this could be used as a basis from which to amend new subsection (3B) to reflect the range of options for permanence that already exist in law—all of which can deliver good outcomes for individual children.

In Committee in the House of Lords, the Government said that the amendment would duplicate wording in Section 22C of the Children Act 1989 that sets out how looked-after children are to be accommodated by local authorities. That is something that I would like to clarify with the Minister. The fostering network disagrees with this because it believes that Section 22C(6) of the Children Act 1989 does not mention long-term fostering and the term has no legal meaning prior to the Care Planning and Fostering (Miscellaneous Amendments) (England) Regulations 2015 that I referred to. Section 22C(6) specifies only the range of ways in which a looked-after child may be cared for, including foster placements. It does not focus on permanence. As the Bill stands, Clause 8 is inconsistent with the statutory guidance on permanence planning. My amendment

would ensure that all permanence options were recognised with equal status across all relevant primary and secondary legislation. We should bear in mind that currently three-quarters of looked-after children are fostered, so this is an important question.

I understand that I have raised some technical issues, but the core importance of this is the need to avoid a hierarchy of care. In addition to responding to the technical questions that I have raised, if the Minister can say that there is no intention of having such a hierarchy, it would indeed be very helpful. I beg to move.

Baroness Walmsley: My Lords, my Amendment 31 in this group would add the child's wishes and feelings to the list of matters that must be included in the local authority's Section 31A plan under the Children Act 1989. Permanence has just been mentioned by the noble Lord, Lord Hunt. The permanence provisions of a care plan must be considered by a court before a care order is made—or in some cases not made. The court must additionally consider contact arrangements and the views of parties to the proceedings about contact. The child is a party in care proceedings, so his or her views would be elicited about contact. To ensure that their wishes and feelings are elicited and reported on all aspects of permanence, it is necessary to specifically include this in Clause 8.

The Department for Education has defined permanence as follows:

"Achieving permanence is multifaceted. It requires children to experience not only physical permanence in the form of a family they are a part of and a home they live in but also a sense of emotional permanence, of belonging and the opportunity to successfully build a strong identity. Legal status may also impact on children's sense of permanence".

Without an explicit and specific requirement, it would be quite possible for the part of a care plan dealing with permanence to omit the child's wishes and feelings about the relationships they value, their sense of belonging and stability and their hopes and dreams for the future. This is not to give undue weight to the child's wishes and feelings or to place unrealistic expectations or pressures on them; it is just to ensure the child's rightful place at the centre of proceedings as a human being whose lived experience, wishes, feelings and perspectives should be at the heart of the court's consideration.

In Committee, the noble Lord, Lord Nash, said that, "this principle is already captured in existing legislation".—[*Official Report*, 6/7/16; col. GC 214.]

However, he referred to provisions in Part 3 relating to local authority consultation duties in respect of the children they look after. This issue is separate from the court's consideration of the permanence provisions of the child's care plan. It could be argued that the court's duty in respect of the permanence provision coalesces with its general duty under the welfare checklist to have regard to the ascertainable wishes and feelings of the child concerned—considered, of course, in the light of his or her age and understanding. However, this is one of many aspects of the checklist; there is a whole long list of things. My amendment seeks to ensure that the local authority seeks and reports on the child's wishes and feelings specifically on the permanence arrangements, in addition to their wishes and feelings on any other matter affecting them.

[BARONESS WALMSLEY]

Statutory guidance on care planning already refers to the child's wishes and feelings, so placing the child's wishes and feelings into this part of the legislation accords with national policy, professional standards and children's rights under the UNCRC. So I hope that the Minister will be minded to accept the amendment.

Baroness King of Bow: My Lords, my motivation in trying to change the law as outlined in Amendment 34 was driven by painful insight. After meeting hundreds of foster families, I realised a strange fact: I had never met a single middle class foster family. Of course they exist, but they are not the norm. The norm is that low-income families foster Britain's most vulnerable children, and that when children with more complex needs are not attractive to prospective adoptive parents, it is the same low-income foster families that often step in to adopt. So it really would be unforgivable for us to further reduce the income of those families who, after all, are looking after our most vulnerable children on behalf of the whole country, by restricting the child benefit payable to adopted children, for whatever reason.

I am delighted that the Government listened to the extremely powerful contributions made on all sides of the Committee and accepted our argument. I am genuinely grateful, in particular, for the personal intervention of the Minister—who, as far as I am aware, made this decision purely on the basis of the arguments placed before him. God knows how rare it is for Ministers to make decisions purely on the basis of the arguments. That is obviously not a party-political point but a realpolitik point. Having been a parliamentarian and immersed in realpolitik for two decades, it gives me real pleasure that my last speech in this House for very many years, since I am shortly taking a leave of absence, will be a speech accepting this concession. In fact, some noble Lords will know that I should have left already, but I have never been great at making an exit, especially if I have concessions coming—and it turned out to be more than one.

It is not an exaggeration to say that I received the overwhelming support of all sides of the House when I tabled this amendment, as well as the Minister's constructive response, along with that of his colleague Edward Timpson MP. Those factors combined have made this particular change in the law one of the highlights of my two decades in Parliament. Some may say I should have had a few more highlights, if I am so excited, but it is absolutely good enough for me because, after all, what this change means is that we will not increase financial disincentives for families that want to adopt children currently in care. Of all the subjects I have pursued in Parliament, this is one of those closest to my heart, because I look at my three adopted children every day and marvel at what happens when you give children a chance. That is what this concession does today. So I shall bow out from Parliament by saying thank you, sincerely—it has been a privilege to influence debate.

7.15 pm

The Earl of Listowel: My Lords, I want to flag up an issue around the wishes and feelings of children, as raised by the noble Baroness, Lady Walmsley. At a recent conference I was listening to a researcher who

was herself a birth family sibling—so she had many foster carers move through her family. One of the fostered children in the family just disappeared one day without any notice to her. She emphasised the importance of listening not only to the voices, wishes and feelings of the child in care, but also to those of the children in the adoptive family or in the foster family. We must make efforts to understand the wishes and feelings of those children, partly out of respect for them but also, very often, because a foster placement or an adoptive placement might break down if the wishes and feelings of those siblings are not respected. If they do not welcome the child, if they feel that the stranger is an intruder into their home, coming between them and their parents, they can very easily undermine the ability of that placement to work. I just wanted to flag up that point.

I welcome the fostering care stocktake that is going on in the Department for Education, which I hope will answer some of the concerns of the noble Lord, Lord Hunt, about parity of esteem for adoption, fostering and residential care. All these are important options. We want to find continuity of care for young people, wherever they are in the care system. I just wanted to flag up that point and I look forward to the Minister's response.

Lord Warner: My Lords, my name is attached to Amendments 30, 31 and 34. I say to the noble Baroness, Lady King of Bow, that there have been Ministers in this House who have made concessions on the basis of the evidence before them; the noble Lord, Lord Nash, is not unique in this, although I am very grateful for the concessions he has made.

Let me start with Amendment 30. Going back in time to when I first became a director of social services in the mid-1980s, and having never, I have to confess, even been in a social services department in my life before, the very first briefing I was given by these luckless social workers who suddenly found that this strange man had been placed in charge of their department was on the importance of permanence and that if I did nothing else in my time as a director, I must promote planning for permanence. That has stuck with me as a big issue. The second briefing said: "You cannot rely on adoption to deliver permanence. Everybody likes to adopt babies and young children but you will find, oh dear director, that there are going to be a lot of children, from the age of 10 and moving into the teenage years, for whom you will have to plan for permanence, and adoption is not the issue".

Any social worker starting out in their career over the last two or three years could be forgiven for thinking that the real answer to permanence is adoption. The points made by the noble Lord, Lord Hunt, are critical: if we believe in permanence as the aim of what we are trying to do—as we all do—we must not give any signals that longer-term fostering is not a perfectly valid option in planning for permanence. We must not delude ourselves, or allow ourselves to look as though we are deluding ourselves to the social work profession, that adoption is the only answer and that, somehow, longer-term fostering is an inferior option for permanence planning. So I hope that the Minister will think about that and what the impact of all this is on the profession,

working day in, day out, on the front line trying to deal with and provide a more permanent solution for many of these children. We need an amendment of the kind that has been framed in Amendment 30 to restore the balance.

We discussed the issue in Amendment 31 pretty extensively in Committee. In those discussions I recall that the noble and learned Baroness, Lady Butler-Sloss, with all her experience in the family courts, said that all too often the voice of the child was absent from our legislation and court processes. She made much of that then, and there is an opportunity now, with Amendment 31—which, if I may say so to the Minister, is just five little words—to put clearly, fairly and squarely in the legislation an amendment that gives the voice of the child some recognition in the legislation. It will not cost the Government anything, so the easiest thing for the Minister to do shortly would be to stand up and say, “I accept Amendment 31”. He will then go out of this Chamber at the dinner break even more flushed with success and encouragement from the Members of your Lordships’ House. As the noble Baroness said on Amendment 34, this is a straightforward way of removing a disincentive to taking siblings into adoption. I am glad that the Minister is going to make a concession on that, but if he is in for one, why not go for a couple of others as well?

Lord Nash: My Lords, I shall speak to Amendments 30, 31 and 34, which concern the decision-making process about how a child becomes looked after and where they should be placed, and the state benefits which families of adopted children should be entitled to. There is also the matter of wishes and feelings. I am very sorry to disappoint the noble Lord, Lord Warner, but I understand that after very helpful discussions between the noble and learned Baroness, Lady Butler-Sloss, and my officials, she—or somebody on her behalf—plans not to move her Amendment 31. I believe she now recognises that it is not necessary, although my officials found the meeting with her extremely helpful. The child’s wishes and feelings are taken into account by local authorities when a child is looked after. This is a legal requirement under Section 22(4) of the Children Act 1989. When any decision is taken with respect to a child who is looked after, the local authority must ascertain their wishes and feelings.

Amendment 30, tabled by the noble Lords, Lord Watson, Lord Hunt and Lord Warner, proposes new wording for the permanence provisions of care plans in the context of care proceedings. As I stated in Committee in response to such an amendment, I recognise the concern that adoption should not be seen as more important than other long-term placement options. In answer to the point raised by the noble Lord, Lord Hunt, I can state clearly that there is no intention to create a hierarchy here between placement options. We want all children in care, or entering care, to find placements that provide stability and suit them. This is what we mean by permanence; there are different ways to achieve it for different children.

Clause 8 seeks to improve the decision-making process about where a child should be placed, whether that be adoption, with a special guardian, with foster parents or in a children’s home, by having particular

regard to the child’s needs and how any placement options would meet those needs. The amendment seeks to explicitly set out in Section 31 of the 1989 Act a list of placement options, such as foster care. However, all placement options, including foster care, are already included within the current legal definition for permanence provisions. Section 22C of the Children Act 1989 and the accompanying statutory guidance set out clearly how all looked-after children, including children subject to care orders, are to be accommodated and maintained by local authorities. This includes a hierarchy of placements with parents, relatives, friends or other persons connected with the child, kinship foster placements with local authority foster carers and placements in children’s homes.

Local authorities and courts are very clear about what placement options they need to consider during care proceedings. Amendment 30 is therefore not necessary and would not add to the existing legislative framework. It would simply duplicate what is already set out elsewhere in the Children Act 1989, which is something that Governments always try to avoid. As the noble Lord, Lord Hunt, said, Section 22C clearly says that foster care is an option set out for local authorities and courts to consider, and this includes long-term foster care. Local authorities and courts understand this, and I am advised that no one is confused in practice on the issue. On that basis, I hope the noble Lord will feel able to withdraw his amendment.

Amendment 34, tabled by the noble Baroness, Lady King, and the noble Lord, Lord Warner, proposes a new clause so that child-related benefits would be payable to adopted children regardless of any limit on the number of children to whom those benefits are usually payable. As noble Lords will know, the Welfare Reform and Work Act 2016 legislated for the child element in child tax credit and universal credit to be limited to two children from April 2017. I was delighted to announce in my letter to noble Lords on 11 October that where a family adopts a child from local authority care and this increases the number of children in the family to three or more, all third or subsequent adopted children will attract the child element of either tax or universal credit. This will be provided for, along with the other exemptions, in regulations and is good news for families who come forward and give a loving home to some of our most vulnerable children. It represents another example of the Government’s ongoing commitment to support these children and their families.

I am grateful to the noble Baroness, Lady King, for her kind words. As the noble Lord, Lord Warner, said, I may not be unique in listening to rational arguments but I may be unique in being incapable of resisting the noble Baroness’s charms and the powers of her arguments. I am sure that we will all miss her and I wish her and her family all the best in California. I hope that it will not be long before we see her back on those Benches.

Amendment 32 would simply ensure that Clause 9 will now apply to adoption agencies in Wales, whereas the previous draft of this provision applied to courts in England and Wales and adoption agencies in England. It will also mean that the provision of the new duty will come into force at the same time in England and Wales. The department has agreement from the Welsh

[LORD NASH]

Government to lay this amendment, in anticipation of the Assembly scrutinising the required memorandum before agreeing a legislative consent Motion.

In conclusion on all the amendments that have been discussed, I hope the noble Lords, Lord Ramsbotham, Lord Watson, Lord Hunt and Lord Warner, will feel reassured enough to withdraw or not press their amendments, and that the House will support the Government's amendment.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister and join him in congratulating my noble friend Lady King on her new adventure, if I may put it that way. I also congratulate her on her success in persuading the noble Lord to change policy, which is very welcome indeed.

On Amendment 30, I hear what the Minister says about the technical arguments, which I hope are reassuring. He clearly said that there is no intention to create a hierarchy of care, which is very welcome. He also said that he thought that no one in practice at field level is confused. I do not disagree at all with the emphasis that the Government have given to improving adoption procedures, but there is a possibility that practitioners may feel that fostering is no longer seen as an equal option. The guidance that will be issued by his department when the Bill is enacted will no doubt give an opportunity to make that point. I am very grateful for the response and beg leave to withdraw my amendment.

Amendment 30 withdrawn.

Amendment 31 not moved.

Clause 9: Adoption: duty to have regard to relationship with adopters

Amendment 32

Moved by Lord Nash

32: Clause 9, page 9, line 11, leave out subsections (1) to (3) and insert—

“In section 1(4) of the Adoption and Children Act 2002 (matters to which court is to have regard in coming to a decision relating to the adoption of a child), in paragraph (f) (relationships), after “relatives,” in the first place it occurs, insert “with any person who is a prospective adopter with whom the child is placed.”

Amendment 32 agreed.

7.29 pm

Consideration on Report adjourned until not before 8.29 pm.

Brexit: Peace and Stability
Question for Short Debate

7.29 pm

Asked by Lord Collins of Highbury

To ask Her Majesty's Government what assessment they have made of the potential effect on peace and stability in Europe and around the world of the United Kingdom leaving the European Union.

Lord Collins of Highbury (Lab): My Lords, I am pleased to open this debate. I expect I shall have an opportunity to wind it up on Thursday morning, as we are having another Europe debate on that day. There may be issues which I shall return to then.

We have been given our instructions by the British people to leave the European Union and we must act on them. The Government must also prepare for the risks that will come from Brexit. Historically, the United Kingdom has been one of the key players in driving the direction of the EU's common foreign and security policy and its common security and defence policy. That has been due largely to our position as one of the largest and most advanced military powers within the EU and to our ability to take command of a mission. It has given us substantial bargaining power to control and influence the direction of EU thinking in the areas of foreign and defence policy.

If we are to have the international security and stability that we seek, development, defence and diplomacy have to go together. While foreign and security policy remain the competence of individual member states, the shared exercise of soft power through the Copenhagen criteria is the biggest benefit the UK derives from EU membership in the sphere of foreign and security policy. This enables us to exert influence in the areas of the world where, independently, we may not hold much sway. Collective action through the EU gives member states more bargaining power over countries with which we want to do deals and more muscle over countries we want to deter from aggression. The ability of the EU to respond to threats as they emerge through its common foreign and security policy has been vital—for example, with the sanctions against Russia following the illegal annexation of Crimea, and in securing the nuclear deal with Iran.

How does the Minister think the Government will be able to maintain the United Kingdom's influence in the development of the EU's common foreign and security policy after Britain leaves the EU? If she believes that the UK will have no influence on this post-Brexit, what assessment have the Government made of the impact this will have on the UK's broader influence throughout the world and the Government's ability to pursue their foreign policy objectives?

In the field of defence, a common security and defence policy gives the UK flexibility to work with EU partners on issues of common interest, such as the highly successful Operation Atalanta mission to tackle piracy in Somalia. That involved not just co-ordinated military action but activities such as helping coastal countries enhance their judicial and prison capacity to deal with those cases—something that NATO could never have replicated. Do the Government intend to maintain the United Kingdom's participation in joint operations and initiatives taking place under the umbrella of the common security and defence policy after Britain leaves the EU?

Britain is also currently a member of the European Defence Agency, which helps facilitate collaboration in the defence industry and carry out research to promote the EU's defence capabilities. Does the Minister know whether the UK is obliged to leave the EDA after it leaves the EU? If it is, what plans do the Government

have to negotiate an agreement with the EDA, enabling the UK to continue participating in its research and technology projects?

The EU's international development assistance helps us to magnify the UK's presence around the world, allowing us to exert influence on countries which—on current rules—would not qualify for allocations from the UK's domestic overseas aid budget. How does the Minister envisage such vital global co-operation continuing after Brexit? Will DfID have to extend its bilateral aid programmes? While I am on this subject, when will the House learn of the result of the reviews of both the multilateral and bilateral programmes conducted by DfID?

For decades, Britain has been a key link, ensuring that NATO and the EU's Council of Ministers and External Action Service act in concert with one another, delivering EU influence, aid, diplomacy and sanctions in pursuit of common objectives. Outside the EU, Britain will no longer play this role. Some have argued that the UK will be able to exert exactly the same international influence post-Brexit, given its permanent place on the UN Security Council and its role within NATO. What this does not address is the effect it will have on British influence and leadership and the knock-on effects on NATO's political cohesion and operational effectiveness.

Of equal concern is that if the EU starts to develop its own distinct foreign and security policies without Britain's influence, it could put its objectives at odds with those of NATO, the UK and the USA. This could destabilise NATO and impede its ability to perform its defence role, the policy towards Russia being a particular concern. What assessment have the Government made of the risk that, without the UK's restraining influence, measures that we have long opposed at EU level—such as the establishment of an EU army—are more likely to come to fruition? How do the Government intend to deal with such risks in future?

Most of the foreign policy risks faced by the UK will continue to require international action—for example, international terrorism, Russian aggression, climate change and the threats to economies that implies, and cross-border cybercrime. Britain is going to need the EU if we want to tackle any of these threats effectively, but we may increasingly find ourselves at odds with the EU over the policy and the mechanism for tackling such threats. It is also clear that the FCO will need to devote significant diplomatic resources during the coming years to the task of exiting the EU. Will the Minister outline what steps the Government are taking to ensure that other vital Foreign Office work, such as in Africa and the Middle East, will not be put at risk?

Before I conclude I want to raise the issue of Gibraltar, which is important in maintaining stable relationships with our neighbours in the EU. Despite 96% of its population voting to remain in the EU, Gibraltar will now leave, along with the rest of the United Kingdom. What steps will the Government take to ensure that we are best able to protect the interests of the people of Gibraltar? What assessment have they made of the risk of increased border controls and the impact they will have on the economic sustainability of Gibraltar?

I am sure there will be many more opportunities to seek explanations from the Government as to how they will ensure their negotiating plan for Brexit will protect our foreign policy and security relationships with the EU and enhance them with the rest of the world. We will certainly have that opportunity on Thursday. There are no easy answers to the questions I have posed, but that is why those who have advocated Brexit need to be confronted with them and made to prioritise them as negotiations proceed.

7.40 pm

Baroness Helic (Con): My Lords, I welcome this timely and important debate. Much of the Brexit discussion has focused on the economy and immigration, not on the implications for our foreign policy or for stability in Europe. At times, it felt as if the referendum debate was taking place in a parallel universe in which the world was at peace, Russia was a prosperous, benign power and Afghanistan, the Middle East and North Africa were stable. Instead, as we know, this is a time of immense uncertainty in world affairs and of great strain in the international system.

In this context, as it stands today, I believe that our withdrawal from the EU is a blow to our international influence and to the stability of our continent. The United Kingdom is a medium-sized economic and military power. Membership of the EU has been part of our ability to punch above our weight in international affairs, and has enhanced our distinctive role, not detracted from it.

Collective EU foreign and security policy, for all its complications, has been crucial in helping to achieve our objectives in relation to the Iranian nuclear programme, Russia's aggression against Ukraine, Somali piracy, the potential destabilisation of the Balkans, the Cyprus question and the Middle East peace process. Leveraging a collective EU response has been a vital asset in British foreign policy, which I believe we will miss when we no longer have it.

Indeed, relinquishing our membership of the EU could result in a sharp drop in Britain's power, unless we have a clear plan for how we will conduct our foreign policy in this new reality. The risk if we do not is that we will find our national energies consumed in negotiating our separation from the EU, our freedom of action in other areas reduced, our diplomatic influence damaged in Europe and beyond and our adversaries emboldened.

Of course, we should not be despondent. We retain great advantages in foreign policy, including our permanent seat on the UN Security Council, our membership of NATO and the Commonwealth, and the strength of our Armed Forces and intelligence agencies, which are second to none.

The Government have rightly committed themselves to making the best out of Brexit, and the Foreign Secretary has said that leaving the EU does not in any way mean leaving Europe. I hope that, on top of this, it will be the Government's policy to continue as a fully engaged and dependable diplomatic partner that does not miss a beat in efforts to ensure the strongest possible European contribution to international peace and security and stands firm with our allies in NATO and beyond, even as we disentangle ourselves from EU institutions.

[BARONESS HELIC]

With that in mind, I shall put three points to the Minister. First, the national security strategies published in 2010 and 2015 envisaged membership of the EU as a fundamental pillar of how we project UK power and influence and protect our security. Does the Minister agree that there is an urgent need for an update of our national security strategy to provide clarity, certainty and direction in these changed circumstances?

Secondly, stability in the European continent has been corroded by what my noble friend Lord Hague, when he was Foreign Secretary, labelled “the creeping oligarchisation” of the economies and democratic institutions of the newest EU member states. Russia also continues a skilful, malign operation to encourage separatism and undermine stability in the Balkans. Does the Minister agree that it is our duty towards our own security to find a way of addressing this problem with our EU allies?

Thirdly, Britain has always been the strongest proponent of enlargement as a means of entrenching long-term stability in Europe. The western Balkans remains a vital piece of unfinished business, and steady progress towards EU and NATO membership has never been more important as a stabilising factor. I therefore hope it will remain the Government’s policy to continue to support EU enlargement, and that we will find a role, even when outside the EU, to encourage, support and mentor the aspiring nations.

The British people have spoken, and we should rally and work for what is in the best interest of our country, making the most of our many opportunities and advantages outside the EU. As we do, I hope that we will not forget the lesson of history, that a stable and prosperous Europe is vital to the national interest of our country, and that we will continue to work for that, whatever else the future may hold.

7.45 pm

Lord Judd (Lab): My Lords, I congratulate the noble Baroness on her courageous and challenging speech, and thank my noble friend for his opening remarks and for the clarity with which he presented the issues which now face us.

I start from the premise that, from the moment we are born, we are inescapably locked into a highly interdependent global community. I firmly believe that history will judge us by the contribution we make to the successful governance of the global community. Therefore, this change in our status in Europe can be seen only as a backwards step because, together with our friends in Europe, we were beginning to explore and discover ways in which we could work together on the truly global issues that confront us.

My noble friend talked about our responsibilities to Gibraltar, which are real, and about the border problems. If we are talking about stability in Europe, the challenge comes much nearer home. What will be the consequence for peace and stability in Ireland? There is very little doubt that the Good Friday agreement related very closely to our membership of the European Union. How are we going to meet the new situation? We need to hear that very specifically and clearly, and the Irish people and the people of Northern Ireland need to hear that.

What of the acute instability, which not many years ago not many of us envisaged as likely, that has developed in eastern Europe with the new aggressive foreign policy of what was the Soviet Union and is now Russia? How are we going to handle that? Do we really think we can handle it effectively on our own? Surely we shall have to work together very closely with our European colleagues. How are we going to do that?

We have to remember that it is not just a matter of how we see we are going to do it but also of how they think we are going to do it. Therefore, perhaps the greatest blow to meeting the global challenges of insecurity that I have mentioned is the psychological impact on the European Community and the wider world of our having so aggressively, almost, expressed our lack of confidence in a future based on co-operation with Europe. That is going to undermine the possibilities of finding pragmatic solutions to the issues.

Of course, in the time available, I can mention only a couple of those. When I was serving on the EU Home Affairs Sub-Committee, we looked at the possible implications of withdrawal from Europe, and what struck me was that so many of those carrying front-line responsibility in the sphere of security in this age of global terrorism said that it could be nothing but harmful no longer to be part of the European Community because that co-operation was so necessary. If we are going to be in a jingoistic mood, and say that the strength of our security services is so much better than anybody else’s, that is not always totally demonstrable, but that is not the point. The point is that, if there are weaker elements in Europe, we need to be working to strengthen them because in the end security is only as strong as its weakest links.

In the sphere of overseas development, in which I have a certain amount of direct experience, not least ministerial, it is crucial that we do not have a fragmented approach to the third world. It does not help development if people are operating to different agendas. The important thing is to get as much co-ordination as possible so that we are working towards common objectives.

To conclude, we have a huge job in this country to continue and strengthen our drive to enable people in this country to face the reality of inescapable global interdependence. We shall therefore have to have some practical, convincing arrangements in place that will enable us to do that.

7.50 pm

Lord Wallace of Saltaire (LD): My Lords, peace and stability is one of those issues that was hardly raised in the referendum campaign. It was an issue that the previous Prime Minister was determined to keep out of the campaign, in spite of efforts by many of us to bring it into the argument, and despite evidence that voters, when asked, responded positively to the reminder.

Since 23 June, the Prime Minister and other Ministers have said that, in leaving the EU, we are not leaving Europe and that we shall continue to play our full part in European foreign policy and external and internal security co-operation. The question that this debate and the one that we shall have on Thursday—and no

doubt others as well—pose to the Government is: when will they tell us how on earth they intend to manage to play our full part when we leave the established structures of co-operation?

In the early years of Margaret Thatcher's Government, Conservative Ministers were enthusiasts for foreign policy co-operation. I remember the London report that the then Foreign Secretary, the noble Lord, Lord Carrington, commissioned from 1980 to 1981 to investigate how to strengthen foreign policy co-operation. Those of us who have read Mrs Thatcher's Bruges speech carefully will remember that that also touched on the need for wider European security, speaking of Prague, Warsaw and Budapest as also being "great European cities" that we had to care about.

When the Cold War ended, the UK was in the lead on enlargement and in assisting the transformation of east European countries towards democracy and stability and in providing training for their police and border forces and armed forces, as we learnt that the disappearance of the Iron Curtain meant that co-operation on internal security and borders had become essential. The UK led in establishing Europol, and Europol has a number of very good British staff and a British secretary-general.

In his first years as Prime Minister, Tony Blair supported closer Franco-British defence co-operation through the 1988 agreement to strengthen and lead closer European defence co-operation and to encourage others—the Germans, the Dutch, the Italians and others—to follow. However, the *Daily Mail* campaign against what it dubbed "the European Army" led him to back off, because he always hated standing up to the *Daily Mail*. Since then, what we have had is a widening gap between the realities of developing co-operation on peace and security and the unwillingness of Ministers, both Labour and Conservative, to admit to the right-wing press or to the House of Commons how far we have been usefully engaged, in our own national interest, in shared European interests.

In 2010, the French took the initiative to strengthen bilateral defence co-operation further. Liam Fox, the Secretary of State for Defence, followed the policy but did his best to suppress public awareness of joint operations and manoeuvres as far as possible. I am told that his first briefing by the official who managed Franco-British co-operation led to the Secretary of State saying, "Ah yes, but I shall want to talk about this as little as possible".

I am told that the memorandum to David Cameron on the commemoration of World War I that sparked off a committee on which I still sit included the phrase, "and we must ensure that commemoration does not lend support to the myth that European integration arose out of the conflicts of World Wars I and II". That is not a myth; it is very much part of why, after the war, we ended up trying to develop European co-operation.

The referendum campaign was thus fought on the basis that this was an argument about economics and sovereignty, unconnected with peace or security. One has to say that Liam Fox and others were European security co-operation deniers in that campaign. Yet the experience of two world wars had been that Britain

cannot stand aside when the continent faces disorder. Earlier today, I was listening to a senior NATO official who spelt out clearly that, in an era of hybrid warfare, cyberattacks, surges of refugees and migrants and economic and financial sanctions as means of political pressure short of war, the EU is now as central to western security as NATO, and the EU is the essential partner of NATO in meeting these threats and challenges.

Without having an answer to how we manage continuing co-operation in foreign policy, defence policy and internal security, we shall have no credible foreign policy. Perhaps it is appropriate that we still have no credible Foreign Secretary to push such a policy.

7.56 pm

The Lord Bishop of Leeds: My Lords, recognising that this debate and that to come on Thursday belong together, although I cannot be here on Thursday, I offer this statement by the German theologian Jürgen Moltmann in a book that I finished reading on the train today:

"A free society is not an accumulation of independent individuals; it is a community of persons in solidarity".

I quote this because the same might equally be applied to nations. It bears repetition that the language and discourse of the referendum—shamelessly, in my view, fuelled by misrepresentations and misleading promises, now apparently acceptable in a so-called "post-factual" world—paid little or no attention to the needs or securities of our international neighbours. They focused purely on the national interests of Britain, as if we can live in isolation or that we can be secure without ensuring the security of our neighbours. I invoke the poet John Donne: in a globalised world, Britain cannot simply see itself as an island.

Although the referendum campaign was dominated by immigration and the domestic economy, with wild promises that should always have used the language of "might" rather than "will", questions about foreign relations and the security implications of a decision to remain in or leave the EU were too often dismissed as if an impertinent intervention by an embarrassing relation.

So the decision to leave the EU now raises questions that should have been identified and fleshed out before the referendum—questions that assume our place as a nation interdependent on a community of nations. If Europe has been focused for a generation or more on integration, it is surely now coloured by a hint of disintegration.

To return to those questions, an example is: Brexit will be hugely demanding of energy and resources, so what will the impact of this be on other areas of government? We hear bold promises that Britain will not retreat in on itself; but if revenues are reduced, costs increase, the pound continues to fall and the focus of resource is on Brexit, what will happen to work with the UN Security Council, NATO, the G7, the G20 and the Commonwealth? Furthermore, is it not inconceivable that this diversion of energy, focus and resource might just create the space for mischief-making by those who might be described as "not our best friends"?

[THE LORD BISHOP OF LEEDS]

Peace and stability cannot be achieved by an approach that is rooted in us simply looking to our own best interests. As we see around the world, particularly in the Middle East, security, peace and stability must be mutual. To seek the security of neighbours, which is essential, is costly.

I have further questions. The last strategic defence and security review was published in November 2015, yet the brave new post-Brexit world will look different from the one assumed a year ago. It is likely, for instance, that increased and enhanced EU defence co-operation—potentially intensified outside NATO—will impact both on the UK and NATO. In turn, if we invest more in NATO, this will have an impact on our relationship with and towards Russia, and this will impact on our response to threats to Poland and the Baltic states. To put it differently, how might greater EU defence co-operation impact on the Government's stated SDSR ambition to,

“intensify our security and defence relationship with Germany”, and to,

“further strengthen the UK-France defence and security relationship”?

It would beggar belief that such questions have not been thought through in detail before now. To put it less charitably, where were the experts when we needed them?

To change tack a little, we recognise that the UK is one of the biggest contributors to the European Development Fund, currently contributing £409 million, which amounts to 14.8% of total contributions to the fund. Have the Government yet assessed the impact of Brexit on the EDF? Will Brexit lead to a narrower disbursement of UK aid to a narrower geographical reach than currently channelled through the EDF? Can the Government give an assurance that the UK's overseas development aid will continue to be spent on genuine ODA purposes and not be used as sweeteners for trade deals, given that trade deals are currently being represented as the highest social good—a questionable anthropological priority at best?

Peace and security are not merely notional aspirations, but demand a broader and deeper vision of what a human society actually is, and for whom it is to be ordered. Peace and stability cannot be empty or merely utilitarian words to be thrown around carelessly in a post-factual world. They demand the prioritising of mutual international relationships and detailed costings—not merely financial or economic, but human, social and structural.

8.01 pm

Lord Farmer (Con): My Lords, I commend the noble Lord, Lord Collins of Highbury, on initiating this timely debate. I do not have the expertise to give a speech on political philosophy, but it is my strong conviction that there is no stable and peaceful world order without a just world order, and that undemocratic systems of government are incompatible with justice. Dr Laura Valentini, of the London School of Economics, who does have that expertise, affords my argument intellectual robustness when she says:

“Contemporary liberals agree that only democratic arrangements can be just”.

To hers, I add the voice of Professor Zillur Khan, of the University of Wisconsin, who makes the following observation:

“Perhaps the most important values sustaining democratic governance and institutions are universal rule of law and right of dissent manifested through tolerance, integrity, effectiveness and responsiveness in electing and selecting decision makers”.

I sincerely hope we never grow tired of experts in this House.

In my contribution to this debate, I want to focus on these underpinnings of democracy and justice and explain how they will be bolstered in this country by our leaving the European Union. Our country will be more peaceful and stable as a result of us decoupling from the institutions of the EU. The restructuring of those institutions which will surely follow, as a result of the shock that Brexit has administered to them, will be beneficial across a wider canvas. Either they will become more accountable, more transparent and more responsive, or the legitimacy they need in order to survive will wither and they will be brought down.

I supported Britain's exit from the European Union, but not because I was cavalier about or ignorant of the economic shocks that would likely follow, albeit that I considered them grossly overstated. As a metals trader for the last 50 years I know a little about the undesirable effects of economic volatility. However, sometimes it is necessary to suffer pain and some disquiet for longer-term good. I am convinced that that is what will follow from us disentangling ourselves from the undemocratic governance system that is the European Union.

In March this year, the *Economist* stated:

“Before the 1972 European Communities Act, the then Tory prime minister, Edward Heath, insisted that ‘there is no question of any erosion of essential national sovereignty’”.

Then, a decade or so later, he brazenly admitted that this was a project that was always about greater political as well as economic union. Subsequently, we have become increasingly sucked into a process we never democratically signed up to: to my knowledge, no winning party's manifesto has ever promised to work towards greater federalisation of Europe. The British people have been labouring under a deceit since the point at which our entry was negotiated.

My own private poll conducted during the referendum campaign asked those I came across the following questions. What does the European Commission do? What powers to initiate laws does the European Parliament have? What powers does it have to repeal bad laws on the statute book? What is the European Council? What is the Council of Ministers? What is the name of the UK's Commissioner and what is his portfolio? What is the name of your MEP? The answer to all my questions, from all the people I asked, was: “I don't know”.

Elections to the European Parliament every five years may have dulled people's awareness that the European Union is a profoundly undemocratic entity. Very many voters are unaware that the Parliament cannot actually initiate legislation, yet it is, out of the seven principal decision-making bodies of the European Union, the only one that is directly elected. Enormous power lies with the Commission, the members of which cannot be removed by the people who fund it—the taxpayers of Europe.

Where there is no accountability there is no possibility of reform. The referendum lifted the veil on this lack of accountability and erosion of sovereignty. Lord Ashcroft's exit poll found that almost half—49%—of leave voters said the biggest single reason for wanting to leave the EU was,

“the principle that decisions about the UK should be taken in the UK”.

Yes, immigration was the other major practical question at stake, but significantly fewer—one-third—said the main reason was that leaving,

“offered the best chance for the UK to regain control over immigration and its own borders”.

It must also not be forgotten that being able to determine levels of immigration so they are best suited to national need is itself a by-product of sovereignty.

As one female voter interviewed by the BBC just after the polls closed eloquently stated, “I like to look in the eyes of those who make my laws”—especially, we could add, if those laws mean public services are at a breaking point and there are no school places for children born in this country. By freeing themselves from the tyranny of remote control, voters have freed themselves from a centripetal force that was threatening to destabilise our own country and that is causing disquiet among other member states. Once again, Britain has led Europe and the world in saying, “We do not need to collude with the deceit that undemocratic institutions and governance are the natural order of things”.

To reiterate, there may well be a period of painful economic adjustment in the short term. The electorate were aware of this; it was not imposed on them. Six out of 10 voters polled the month before the referendum said,

“we must have more control ... even if that means missing out on some of the benefits of co-operating with other countries”.

But in the longer term, the democratic rewards flowing from the increased accountability and transparency of government will be for the common good of the peoples not only of the United Kingdom but also of the whole of Europe.

8.07 pm

Lord Lee of Trafford (LD): My Lords, any debate on this subject must start with an awareness of a newly emboldened Russia, as evidenced by its actions in Ukraine and Syria, and on the back of enhanced defence spending and the modernisation of its forces. Under Putin, Russia challenges the West, constantly testing and probing. In the face of all this, it is crucial that we demonstrate our resolve to stand firm and deter, making it absolutely clear that we will honour our alliance responsibilities. However, for this to be taken seriously, NATO forces have to be continuously upgraded, numerically substantial, realistically deployed and operationally effective. Above all, there has to be the political will both to take defence seriously and, thus, to commit the appropriate expenditure.

Although NATO obviously continues as a military alliance, Brexit inevitably weakens the United Kingdom's overall European influence and co-operation, as evidenced by my noble friend Lord Wallace's example on cybersecurity. We are one of the few NATO countries

spending approximately 2% of GDP on defence and are hoping that others will follow, and on this, clearly, Brexit is a big negative. However, it is not all bad news. We have politically and militarily argued against a European army, working alongside our partners, but not much further. As Defence Secretary Fallon said earlier this month, the United Kingdom would do all it could to resist a European army while in the European Union. Encouragingly though, other countries wish to move towards this. As Mrs von der Leyen, the German Defence Minister, said in July, closer military co-operation at the EU level had constantly been blocked by Britain and was one area where member states could show voters some positive developments from Brexit. Thus France and Germany have just signed an agreement for German air crew to be based in France for the first time since the Second World War and to share a new military transport fleet of C-130J Hercules. France and Germany also announced that the 5,000-strong Franco-German joint brigade established in 1987 would form part of an enhanced NATO presence under Germany's lead in Latvia. All this was described by French Defence Minister Le Drian as a “slow but persistent path” towards a European defence.

We all know of the wasteful, duplicated and inefficient purchase of defence equipment by NATO countries. Until we have much greater integration on the lines of the new Franco-German example, sadly I believe little will change. Brexit can only make this ever more difficult and unlikely. On the world stage, Brexit can only disappoint our friends and please our enemies.

8.11 pm

Baroness Jolly (LD): My Lords, the noble Lord, Lord Collins, in instituting this debate and introducing it, spoke about the three elements: defence, international development and foreign policy. Many noble Lords painted rich landscapes of the whole issue of peace and stability. I will paint a miniature of how this looks in a certain area of defence that I believe was touched on by only one noble Lord.

I do not think that defence or peace and stability were issues that were raised during the referendum campaign or in its immediate aftermath. But within a very short period, think tanks were all trying to look at the impact of the referendum result from a defence perspective—and it did not make happy reading. Issues such as our economy, our role within NATO and the issue of an EU army quickly climbed the agenda.

Of course, we remain a steadfast member of NATO, and many of the key players in NATO are also members of the EU. We went to the Warsaw NATO conference just after the referendum, and people who were there said that the feel was different. No one really knew what our view was and where we stood; there was total confusion. Other noble Lords have indicated that nobody had actually thought about this beforehand. So it was no surprise that in such a short period of time we were not able to put together an argument.

This confusion was exacerbated last week by the Foreign Secretary giving evidence to the Commons Foreign Affairs Committee and stating that, rather than trying to block attempts to develop a common EU defence policy, the UK should instead be looking at ways to offer support. Part of me understands that

[BARONESS JOLLY]

and thinks that it is a good idea because that was where we were a few months ago—but we know that Secretary of State Michael Fallon, a long-standing opponent of an EU army, has said he would oppose such a proposal.

Would the Minister tell the House whether defence is on the Prime Minister's list of issues to have on the negotiating table, and whether she would take the view of either her Foreign Secretary or her Defence Secretary? If defence is not on her list, it should be. We have been working on many joint ventures of common interest, including cyber, hybrid warfare—and, of course, the refugee situation in the Mediterranean.

We are now all concerned about the economy: the pound against the dollar and the euro. This will impact on defence spending. Since 2010 we have had two defence and security reviews. Philip Hammond has concentrated on reducing personnel and committing to building up reserve forces. The first was easy; persuading people to sign up as reserves less so. But it has left us with a force where we do not have the skills we require and yet we have expensive infrastructure to service. The second review was last year, under Secretary of State Michael Fallon. It put in place, across the three forces, the necessary hardware and other infrastructure to support our defence strategy and work effectively in the world into the future.

Our fear is that we have a long shopping list in US dollars: F35s for our carriers; Boeing P8s to carry out airborne reconnaissance; and Apache helicopters made in the States rather than Leonardo ones made in Yeovil—not to mention much of the interior bits and pieces of the newly approved deterrent or Vanguard replacement, and some of the technical wizardry in the carriers, too. These contracts were signed before the referendum and, as we buy from the US in dollars, given the tumbling exchange rate, how much more will it cost us?

Staying with this theme, our next anxiety about Brexit is our declining GDP; 2% of less means that we will be spending less on our conventional defence. If these two financial worries really add up and collide, could we find ourselves with a new SDSR based on austerity and not on relative prosperity, as the last one was? Is the Minister in a position to indicate whether this might be the case?

I turn to the common defence and security policy. Until we leave the EU, we remain a member—but how much we are allowed to engage in that time will depend on the other member states. However, we would expect to remain involved in Bosnia, in the Mediterranean—dealing with migrant smuggling from Libya—and around the Horn of Africa on counterpiracy and arms and drugs smuggling. It may be that, without Britain, some skills and capacity will be lost. Prime Minister Theresa May and Secretary of State Fallon may be persuaded to let us participate, but the PM would be reluctant to be involved in anything resembling an EU army—to which she is opposed and which, had we remained a member of the EU, she would veto.

We must be clear that leaving the EU will leave us without much influence in the EU defence agenda going forward. We would hope to keep up bilateral alliances with individual states, and we are unambiguous

in our commitment to NATO. As well as trade, the environment, science, research and immigration, we need to make sure that peace and defence do not get lost in the wash.

8.17 pm

Baroness Goldie (Con): My Lords, this has been a rich debate that has covered a great deal of ground. Noble Lords' collective expertise and deep understanding of the issues, which are manifest in their contributions, are immensely valuable.

The Prime Minister has made it clear that there will be challenges ahead as we make plans to leave the European Union. The UK will be the first member state to leave, so obviously we are in uncharted territory. At the same time, the EU itself is facing other significant economic and political challenges. All this is taking place in the context of a world that is interconnected as never before and where conflict, instability and mistrust of the established order are on the rise. It is right to question whether our withdrawal from the EU could have an impact on peace and stability, not only in Europe but in the wider world, and I am grateful to the noble Lord, Lord Collins, for making possible the discussion during this debate today. In seeking to answer that question, we must remain objective while recognising that none of us has a crystal ball to predict the future with certainty.

Our assessment is that there are indeed significant challenges to peace and stability ahead, but that they are not ones brought about by the UK's decision to leave the EU, nor do we assess that they will be exacerbated by our leaving the EU. That is because we remain absolutely committed to promoting and defending global peace and security and the rules-based international order. As a number of noble Lords have indicated, we remain an influential permanent member of the UN Security Council, the second largest contributor to NATO and a leading member of the G7, the G20 and the Commonwealth. My noble friend Lady Helic underlined the importance of that. We remain an outward-facing nation and a force for good, with a diplomatic network that is respected across the world. We will continue to put that network to good use, working with our international partners, including our European neighbours, to find solutions to some of the world's most complex challenges. I hope that reassures the noble Lord, Lord Collins, who dwelt on these aspects in his contribution.

The challenges include those from state and non-state actors, social and economic tensions, conflict, corruption, climate change, poverty, inequality and intolerance. In Europe, a resurgent and revanchist Russia has defied the established security order through its illegal actions in Crimea and its destabilisation of eastern Ukraine. Russia's support for President Assad and its deplorable bombing of civilian areas are putting obstacles in the way of peace in Syria.

Further afield, Europe faces an arc of instability stretching from west Africa to the Middle East to eastern Europe. Conflict, fragile states and political vacuums have given rise to new and virulent forms of extremism that threaten everyone's security. The migration crisis has its roots in these fragile states; instability far from here is causing desperate people to risk the

dangerous journey to European shores. In Asia too, we face challenges to the rules-based international order from North Korea's nuclear and ballistic missile tests, in defiance of UN Security Council resolutions. I assure noble Lords that the UK remains engaged on all these issues and more, and leaving the EU will not change that.

Our global engagement goes beyond foreign policy. Our membership of NATO is at the heart of British defence policy and our commitment to it is absolute. We meet the target of 2% of GDP on defence and spend 20% of our defence budget on major new equipment and research and development. We are a nuclear power. The Prime Minister reaffirmed our commitment to Trident in July and we are a framework nation, both for NATO's new enhanced forward presence on the eastern flank and for the Very High Readiness Joint Task Force. We are the only NATO ally with this profile.

Our defence and security commitments go further. We are the sixth largest financial contributor to UN peacekeeping, with British peacekeepers currently deployed in six missions around the world. We know that stability and prosperity go hand in hand, and we remain committed to spending 0.7% of gross national income on overseas development. We remain a passionate advocate for the women, peace and security agenda and the sustainable development goals. We are working hard to increase women's participation in all areas of life to stamp out corruption, reduce poverty and tackle climate change. Indeed, as my noble friend Lady Anelay so eloquently indicated in the debate last week, we remain an international leader on the women, peace and security agenda. In 2006 we developed a national action plan, one of the first countries to do so, and in particular the Government's commitment to the Preventing Sexual Violence in Conflict Initiative remains strong. So we have ambitious plans for the future.

In the time available, I shall try to deal with some of the more specific contributions. The noble Lord, Lord Collins, raised the issue of defence in relation to NATO, and I hope I have managed to reassure him with some of the comments that I have already made. He also mentioned Gibraltar. I make it clear that our stance on Gibraltar has not changed, and we will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their wishes.

The right reverend Prelate the Bishop of Leeds, in a reflective contribution, quoted John Donne. If my memory is correct, the rest of the quotation is:

"No man is an island, entire of itself;
every man is a piece of the continent,
a part of the main".

I agree, because for the UK, the continent and the main, in the global world, includes countries beyond those in the EU, but together with all these countries, we have a mutuality of interest. It is very important that we do not lose sight of that.

My noble friend Lady Helic talked about the national security strategy. As far as I am aware, there is no specific proposal at the moment in relation to that strategy. On Russia and the Balkans, we have set out in our strategy the threats to the UK and our allies, and

Brexit will not change our support and co-operation. On enlargement, which she also raised, we continue to support countries committed to the accession process as a way of embedding stability and addressing challenges through reform, particularly in the western Balkans.

There were some interesting contributions on whether leaving the EU in some way creates a severance with our other partners and relationships throughout the rest of the world. Indeed, there were some questions about what happens to our relationships with the countries of the EU and the extent to which we can continue to have bilateral or wider relationships with them. There are already some very interesting examples: the UK has constructive relationships already with all EU states, on a bilateral level as well as through the EU. France is an interesting example: we work together on a wide range of fields, not just foreign and security policy, but defence, energy, migration, transport and trade. When we leave the EU, we will not step back from these relationships. Therefore, I hope your Lordships agree that there are opportunities and potentially new relationships to forge, new relationships to strike with other countries—whether they are within what will be the remaining EU, or countries in the rest of the world.

I conclude by reiterating the words of the Foreign Secretary: that we may be leaving the EU but we are not leaving Europe. That might sound like a platitude, but it is worth while constantly reminding ourselves of that. We may be an island; we may have a stretch of Channel between us and the rest of the continent that comprises the land mass of the EU, but that does not mean that we fracture the relationships or various objectives that we have negotiated over the years on a bilateral level with individual countries in the EU. As a Scot who has lived with and recognised the auld alliance with France over centuries, I hope I can give your Lordships heart in saying that these relationships are possible. They can be forged, and they can be enduring.

I remind the House that Europe's security challenges are our security challenges. Instability thousands of miles away has its echoes on the streets of our towns and cities. We will not be pulling up the drawbridge or turning our backs on the world. Collective action remains a cornerstone of international order and we will continue to work constructively with our European neighbours—and with our other international partners—to further our shared values and interests.

I thank your Lordships for what has been a very helpful and positive debate. We covered various interesting territory. I realise that for some noble Lords, there have not been sufficiently specific answers to some of the questions posed, and I understand the frustration, but we are at a stage in our journey to leave the EU where specification and more precise information cannot be produced. That is not being evasive: it is just stating a matter of fact, and I ask your Lordships to be patient with the Government in that respect. Finally, I thank all those who contributed to the debate for raising a number of important issues. These are matters that the Government will certainly continue to keep before us, and to which we will pay close attention.

Children and Social Work Bill [HL]

Report (1st Day) (Continued)

8.29 pm

Amendment 33

Moved by **Lord Watson of Invergowrie**

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

“Profit-making and children’s social services functions

- (1) Social services functions conferred on or exercisable by a local authority so far as those functions relate to children shall not be discharged by a body corporate that is carried on for profit.
- (2) “Social services functions” has the meaning given by section 1A of the Local Authority Social Services Act 1970.”

Lord Watson of Invergowrie (Lab): My Lords, the noble Lord, Lord Ramsbotham, has been called away and has asked me to move Amendment 33, which I am pleased to do, because I shall speak also to Amendment 35 in my name in the group.

Clause 29 refers, some would say euphemistically, to “different ways of working”, and others have spoken of the need for “innovation”, both of which are essentially code for exempting local authorities from some requirements hitherto imposed by children’s social care legislation. We hold strongly to the view that child protection and wider social care should not be run by an organisation seeking to make a profit. That is why we joined Liberal Democrat and Cross-Bench Peers, as well as the right reverend Prelate the Bishop of Durham, in Committee, demonstrating the breadth of support for that requirement to appear in the Bill.

The Minister has consistently been asked to explain what problem Clause 29 is designed to address. I have to say that from our point of view he has been unable to do so. At the briefing on this part of the Bill held last week, the Children’s Minister was also unable to come up with a convincing answer. A representative from three London boroughs highlighted one aspect of their joint operations, but it did not seem to be in an area in which they were constrained from operating as things stand. Indeed, those London boroughs were in a list of local authorities that I read out in Committee, all of which have been able to innovate within existing legislation.

However, I do not want to pre-empt the argument that we will advance when we come to consider Amendment 54, tabled by the noble Lord, Lord Nash, on our second day of Report on 8 November, so I will say no more about the detail of that just now.

In Committee, the noble Lord, Lord Ramsbotham, acknowledged that an amendment seeking to give extra force to an existing regulatory ban on profit-making in children’s services by enshrining it in primary legislation did not sit easily in a group of clauses headed “Care and adoption proceedings in England and Wales” but, he added, neither did any fear that the Government might use Section 1 of the Children and Young Persons Act 2008, which enables the social care functions of a local authority to be discharged by a body corporate, to defy that ban. Such a fear was articulated by the Association of Directors of Children’s Services, as well as many other organisations delivering children’s services, which, in its response to a 2014 consultation on draft

regulations concerning a significant extension to children’s services that could be outsourced, strongly rejected any profit motive in their provision. The association wrote:

“Decisions taken about a child’s life should only ever be based on what is”,

best for,

“the child as assessed by skilled and qualified social workers and the courts system. These decisions cannot, and must not, be subordinate to the pursuit of financial profit”.

The Government’s response at the time included the insertion of a prohibition on profit-making into the final regulation of those services that could be outsourced, and the Minister assured noble Lords at Second Reading that the Government had no intention of lifting that ban. However, many in your Lordships’ House, not to mention the plethora of organisations which have contacted noble Lords since the Bill was published, feel a distinct sense of unease that his assurance sits awkwardly with Clauses 29 to 33, which allow local authorities to opt out of some of the provisions in existing regulation and legislation.

In his recent review, Sir Martin Narey questioned profit-making, despite the fact that the Government repeated their assurance on the ban in their submission to him. As events in July demonstrate, Ministers come and go, often unexpectedly, and government policy changes abruptly as a result. I need only mention the words “grammar schools” as proof of that. There have been too many government U-turns in recent history for any noble Lord to feel entirely comfortable that all will be well with the ban on profit-making service deliverers in future.

The simplest way to assure practitioners and noble Lords who feel the same way as I do on the issue would be for the Minister to confirm that the Government will reconsider their refusal to enshrine their regulatory function in the Bill. I would therefore be grateful if he would agree to take the matter away for further consideration and come back to me before Third Reading. I should say that when I say “me”, I mean the noble Lord, Lord Ramsbotham.

Amendment 35 has been resubmitted and is of the type that has a habit of surfacing regularly, because it seeks to get the Government to collect and collate information, publish a report and submit it—and, by extension, themselves—to Parliament to be held to account. It could be said that that is fairly basic democracy, but rarely do the Government agree. They usually cite some bureaucratic reason for being unable to comply. On this occasion, it is primarily an attempt to ensure that local authorities, rather than the Government, are held to account. If the Government are not minded to accept this amendment, then perhaps the Minister will inform noble Lords how he intends local authorities to be benchmarked. How are they to be measured in terms of how they deliver services to children in and leaving care? If there are no known outcomes, how is progress to be measured?

The Government have conceded that children’s services in some areas are not delivering the best possible outcomes for vulnerable children. Society as a whole has a responsibility to do better for these groups of

children. If the Prime Minister was serious about wanting to create a country that works for everyone, these are exactly the type of young people whom she needs to focus on, because they are those who all too often get left behind. Ministers have identified improving outcomes as a priority and this is the driver for the DfE innovation programme and for the controversial innovation clauses, which as I said will be debated next month. However, the only way to measure whether innovation is working is to have an outcomes framework with annual reporting obligations. That would enable comparisons as to how different local authorities were performing and test whether different models for delivering social services are, or perhaps more importantly, are not working. It would also allow good practice to be identified and—crucially—to be shared.

The most important aspect of the outcomes highlighted in Amendment 35 is that they are about children's well-being and life chances. This must be at the heart of any innovation, however that is described and no matter the context in which it is operated. It is essential that we make sure that changes are not made solely or even mainly for the sake of efficiency savings, which is tempting at a time of increasing demand and decreasing resource. I beg to move.

Baroness Pincock (LD): My Lords, it seems to me fairly demeaning that the state cannot collectively care for vulnerable children without resorting to a profit motive. In all the private meetings we have had with Ministers in regard to the Bill, we have been reassured that there is no background intention on the part of the Government to enable services to be outsourced to give a profit motive. That would require a change in legislation. The period of changes that we are now undergoing needs guarantees and I point to a report that I believe was in the *Guardian* newspaper a couple of days ago, which refers to Sandwell Council having been ordered to contract out its children's services. It will mean,

“that services, including child protection investigations, making applications to the courts to have children removed from their families and the management of children in need plans will be outsourced to an independent organisation, and accountability will only be back to the council through a contract”.

I thought we would have learned enough from the academisation of schools to know that contracts do not necessarily provide sufficient accountability, either for financial management or—certainly not—for providing services in the best interests of children. We are talking about the most vulnerable children. As far as I can find out, no other country allows this sort of intrusion by a private company into the lives of vulnerable families, and decisions about the welfare and protection of children to be taken by private companies which are not directly accountable to the state, either to the Government, or in this case to local authorities. It raises a fundamental principle. As we have discussed at great length throughout the Bill, we are all very concerned to provide the best possible protection and care for vulnerable children. However, we are possibly undermining that by allowing and enabling the outsourcing of children's services for a profit motive, which by its very nature may result in children not being first and foremost in the mind of the company undertaking the work.

For those reasons, we totally support the amendment in the name of the noble Lord, Lord Ramsbotham. We hope that the Minister will be able to give a categorical assurance that the outsourcing of children's services for profit will not take place, and that, failing that, he will include such an assurance as an amendment at Third Reading.

Lord Warner (CB): My Lords, I shall speak to Amendments 33 and 35, to which I added my name. It is very clear from the Bill that government Amendment 54 is much narrower than Amendment 33. I do not want to get into the detail of that amendment—we will discuss it in due course—but it relates only to the power-to-innovate section. From my reading of the Bill, it does not have the more general effect that the amendment of the noble Lord, Lord Watson, does. So there is still an issue, even if one accepts the good offices of the Government on Amendment 54.

Perhaps we might explore a little more the issue of profit. We started to do this in Committee and I think that we got into a bit of a muddle. I am not a staunch supporter of public monopolies, so I do not have a problem with a degree of competition. I was at the event that LaingBuisson organised for the department on the whole issue of market-making, particularly in relation to failing organisations. I am not sure whether the Government have ever published the report that LaingBuisson produced—but it certainly did produce a report. I spoke at the conference, where there was a strong feeling that there were certain functions that needed to be carried out by a state body. I think that the question of whether you could contract out some of those services to a not-for-profit social enterprise or a voluntary organisation started to get a bit fuzzy, but there was a very strong core feeling that some of the services charged with statutory child protection were not areas that you could contract out. Then we went through a range of services where people were more or less comfortable with the idea of a degree of profit-making.

Here, it is important to be very clear about what we mean by profit-making. I mean profits that are available to be distributed to the shareholders of the organisation. I do not think that we could run very good services for children in their entirety if we did not accept some voluntary organisations running the services on a contract basis. However, that is on the basis that they are perfectly entitled to create a surplus in some of their activities in order to reinvest that money in the services they provide. That is a perfectly reasonable proposition, and we certainly do not want to put anything in the Bill that stops people having a contract with local authorities, not to make profits in the well-understood sense of profits to be distributed to shareholders but to run the services efficiently so that they can engender some kind of surplus that can be reinvested to make the services better, particularly as demand for some of those services increases over time. So the Government need to come clean about what happened when they had this interest and set LaingBuisson loose on the whole market-making issue, because it has raised a great deal of concern in the wider world of children's social care about their intentions. A little more clarity on what they are in this area would be very welcome.

8.45 pm

On Amendment 35, we know that looked-after children have, over many decades, had bad outcomes—that is why we are soldiering along trying to improve these services. However, it is only a pretty long time after the event that we get any kind of clear measurement of how bad the situation was. This amendment would enable us to build up a database and to see, in a more timely way, whether things are improving—and improving both nationally and locally. It would make it easier to find out where the hotspots of poor performance were in some of these service areas if we had this kind of data collection.

We have pre-legislative impact assessments so that we can look at legislation and try to understand what its impact is likely to be. Why do we not have post-legislative impact assessments and collect data to assess how well Parliament's intentions have been delivered? The amendment that the noble Lord, Lord Watson, has produced would enable Parliament to better understand what has happened to its legislation in this particular area.

I would have thought that any well-run organisation such as a local authority would not object to collecting this data because it would want to know how well its services were performing. That is all part of being a well-managed public body. So I cannot see what the arguments are against the principle of Amendment 35. It is all about getting value for money, good performance and better outcomes for children—so what is not to like about an amendment of this kind that makes a local authority a better manager of its particular services?

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise briefly and with some trepidation to give a word of warning about Amendment 35. Having previously chaired corporate parent panels and attended foster carer forums, which included listening to the views of looked-after children, I am aware that we need to remember that at the end of these checks—I am going to speak particularly about physical health checks—there is a child. In the past, looked-after children were often pulled out of class for a medical check-up with a GROUP—which, of course, their peers sitting around the classroom did not have to do because they had parents who would monitor their health. So, while it is really important that we collect the data, ready for report, the assessments for looked-after children have to be made extremely sensitively so that they are not stigmatised as they have been in the past.

The Earl of Listowel (CB): My Lords, I have a question about the data on outcomes. In the recent care leavers strategy, it was published that 90% of care leavers up to the age of 21 are in satisfactory accommodation. But the data that that was based on suggested that 81% were in satisfactory accommodation. Will the Minister take that away and get back to me to explain why those outcome measures seem not to agree with each other? I hope that that is clear enough.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I would like to thank noble Lords for these amendments. I will speak about each one in turn, commencing with

Amendment 33, which would prohibit profit-making in children's social services functions, and then Amendment 35, which would put a duty on local government to report on several outcomes for vulnerable children and for the Secretary of State to publish an annual report on these outcomes.

I recognise that profit-making in children's social care is a sensitive issue, and I entirely understand noble Lords' desire to ensure that legislation is clear on this point. We believe that it is. There is already a clear legislative restriction on the outsourcing of children's social care functions in the 2014 relevant care functions regulations. There are also restrictions on profit-making by adoption agencies through the fact that the Adoption and Children Act 2002 allows an adoption service to be operated only by a local authority or an organisation that is not carried on for profit. These restrictions as they stand in secondary legislation have exactly the same force as they would in primary legislation. Any attempt to remove them would need to be debated in both Houses. Therefore, although I entirely understand the intention, I do not think it is necessary to move this to primary legislation.

The noble Lord, Lord Warner, referred to the LaingBuisson event—an ideas-generating event exploring new approaches to service delivery. As he said, concerns were raised about profit-making in child protection, and these are reflected in the 2014 regulations to which I have already referred.

I understand, however, that there is some concern about whether Clause 29, the power to test new ways of working, could be used to reopen this matter. I have therefore tabled a government amendment that will explicitly rule out using Clause 29 for profit-making. This was never the intention behind the clause, but by including this amendment I hope to put the point beyond doubt.

On Amendment 35, the Government are committed to understanding what drives successful outcomes for vulnerable children. It is critically important that we collect data from local authorities and others to steer evidence-based and effective policy-making. The Government have already placed a duty on local authorities under Section 83 of the Children Act 1989 to provide information to the Secretary of State on their performance on a wide range of children's social care functions, including on vulnerable children and care leavers. The Department for Education already publishes annual reports on the outcomes for vulnerable children, including their educational attainment and levels of absence and exclusion from schooling. For looked-after children, we also collect information from local authorities on offending, substance misuse, healthcare, and emotional and behavioural health. For care leavers, we publish information on their accommodation—

Lord Watson of Invergowrie: I welcome the information that the Minister has given us about the Children Act. However, can he say whether any of the headings listed in Amendment 35 appear in that legislation and whether any of them are reported on as things stand under that legislation?

Lord Nash: I will check that and come back to the noble Lord, either today or in writing.

For care leavers, we publish information on their accommodation and its suitability, as well as information on their participation in the labour market. Statistics are published annually.

As with national data, it is essential that local authorities collect the data they need at a local level to offer bespoke services to their communities. We know that many local authorities are making great progress on their data analysis capabilities. Noble Lords may be interested in looking at the Association of Directors of Children's Services report, *Pillars & Foundations: Next Practice in Children's Services*. The Department for Education is exploring ways of improving data collection on the experiences and outcomes for vulnerable children. Last year, for the very first time, we published factors identified by social workers in assessments of children, including parental and child risk factors. This helps us to understand the risk factors that are likely to lead to social work intervention with families.

I recognise that there is more we can do to make better use of data. *Putting Children First*, published in July, sets out the programme of work we are following to improve our data. We want to ensure that our data collections are focused on the most useful information without placing unnecessary burdens on local authorities. We are working with local government and with Ofsted to align different data requests and avoid duplication.

We also recognise that data collected by other departments or agencies offer the potential to gain a fuller understanding of the outcomes achieved by vulnerable young people. We plan to identify opportunities across government to align and analyse different data collections to understand trends and to target resources effectively. We are already working with HMRC, the Department for Work and Pensions and the Ministry of Justice. The Department for Education will soon run its first children's services omnibus survey, which will include questions on children's social care to gather information from senior leaders and managers in local authorities. This biannual survey will run initially for two years, enabling us to collect data to track changes. We expect the first results to be available in early 2017.

On the point raised by the noble Earl, Lord Listowel, I will write to him on that matter. I will also write to the noble Lord, Lord Watson, on the point that he raised.

I hope that the noble Lords, having heard that I am tabling a government amendment around profit-making and of the existing legal requirements and planned activity to report on outcomes for vulnerable children, will withdraw or not press their amendments.

Lord Watson of Invergowrie: I thank the Minister and look forward to receiving his letter. I note what he says about further legislation on profit-making not being necessary. As I have moved the amendment on behalf of the noble Lord, Lord Ramsbotham, I should just say that he asked whether the Minister would meet with him in advance of Third Reading. As the Minister is nodding, I take it that he accepts, so that is welcome.

The noble Lord, Lord Warner, mentioned the LaingBuisson report. The Minister may recall that I recently asked a Written Question on when the report was going to be published, and his response was

something like "in due course". It would be helpful if we could have it published before we return for day 2 of Report, which is nearly a month away. That would perhaps give us the ability to have a fuller debate. I think it is there; it just has not been published. If the Minister could push that along, that would be helpful.

I note what the Minister says about collecting data and that leading to evidence-based policy, which is something that I very much agree with. In terms of the information collected already, he seemed to suggest that the means were already there for the information mentioned in the amendment to be collected. When his letter is received, I will see whether that is the case. At the moment, there is still concern. Given the changes in this Act, and moving forward not least after today on mental health, we would like to see something measured as a benchmark against which we can measure progress. I am also interested to hear about the children's services omnibus survey, and I think that will be widely welcomed. I look forward to the outcomes of that in a year's time. On the basis of the Minister's responses, I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

Amendments 34 and 35 not moved.

Clause 12: Functions of the Panel

Amendment 36

Moved by Lord Nash

36: Clause 12, page 11, line 10, leave out "arrangements" and insert "regulations"

Lord Nash: My Lords, I shall speak to Amendments 36, 39, 42, 45 and 48. Amendments 36, 39 and 42 relate to Clause 12, regarding the Child Safeguarding Practice Review Panel.

The Delegated Powers and Regulatory Reform Committee noted that the Bill sets out the functions of the new panel through a combination of provisions in the Bill and arrangements. The committee's view was that the proposed use of such arrangements constitutes the delegation of a legislative power. As I noted in Committee, I agreed with the committee's arguments, and these amendments reflect its recommendation that the arrangements should instead be set out in regulations, which are subject to affirmative parliamentary scrutiny. I hope that noble Lords will welcome these amendments, which provide for robust parliamentary scrutiny.

Amendments 45 and 48 amend the regulation-making powers referenced in Clauses 15 and 17. In setting up their local safeguarding arrangements, safeguarding partners are required to consider which agencies they may need to work with and how they organise themselves most effectively to safeguard and promote the welfare of children. The regulation-making power in Section 16E(3) of Clause 15 provides for the Secretary of State to specify the relevant agencies that exercise functions in relation to the welfare of children and with whom the safeguarding partners need to consider working.

[LORD NASH]

The Government have considered the Delegated Powers and Regulatory Reform Committee's report and recommendations. The report recommended that the relevant agencies should be named in the Children and Social Work Bill, rather than in regulations brought forward by the Secretary of State. Our view is that the relevant agencies should not be listed in the Bill. In order to allow for arrangements to be fully tailored to the specific needs and circumstances of each local area, we need safeguarding partners to know that they have flexibility and discretion. Specifying relevant agencies in primary legislation would not adequately signal this.

However, we are bringing forward Amendment 45 to provide that the regulations made by the Secretary of State that specify the relevant agencies will be subject to the affirmative procedure. The draft regulations will therefore be considered in both Houses of Parliament, which I hope noble Lords will welcome. Furthermore, as promised to the DPRRC, an indicative list of relevant agencies has been provided to noble Lords, on which I would very much welcome noble Lords' comments.

Section 16G(6) inserted by Clause 17 sets out that regulations can provide for enforcement of the duty imposed in Section 16G(4) by the Secretary of State. This would occur only where the Secretary of State considers there to be no other appropriate means of enforcing that duty.

Amendment 48 states that the regulation-making powers of the Secretary of State introduced by Section 16G(6) to enable the enforcement of the duties imposed by Section 16G(4), cannot "create criminal offences". Again, this was set out in response to the DPRRC. I beg to move.

9 pm

Lord Hunt of Kings Heath: My Lords, I welcome these amendments and support them. I agree with the Minister about his Amendment 45: that is a better way to do it. It gives a certain amount of flexibility, which is clearly required because no one today can specify which organisations in 10 years' time are likely to be involved. Affirmative regulations give us some safeguards.

Amendment 36 agreed.

Amendment 37

Moved by Lord Nash

37: Clause 12, page 11, leave out lines 15 to 17 and insert—

"() The purpose of a review under subsection (1)(b) is to identify any improvements that should be made by safeguarding partners or others to safeguard and promote the welfare of children."

Lord Nash: My Lords, I shall speak to Amendments 37, 38, 41, 46 and 47.

These relatively minor refinements, through Amendments 38 and 47, to the terminology used provide greater specificity and focus to the clauses. The Government believe that this will more precisely clarify the overall purpose of the new local and national reviews. Clauses 12 and 20 refine and strengthen the description of the purpose of local and national reviews,

to be conducted by the Child Safeguarding Practice Review Panel and the safeguarding partners respectively. Amendments 38 and 47 provide more specific detail around what should be published following those reviews, where it might be inappropriate to publish the full review. The amended wording states that the purpose of a review should be to identify,

"improvements that should be made",

rather than,

"to ascertain what lessons ... can be learned".

Amendment 37 relates to the national child safeguarding practice reviews, and requires the identification of improvements that the safeguarding partners should make to improve safeguarding and promoting the welfare of children, following the review. Amendment 46 relates to the local child safeguarding practice reviews, and requires the identification of improvements that persons in the local area should make to improve safeguarding and promoting the welfare of children, following the review.

We have listened to noble Lords' comments in Committee, and heard consistently that reviews of incidents of serious harm to, or death of, children should focus on what can be done to reduce the chances that such incidents will be repeated. We therefore feel that it is necessary to step away from the broad language of "lessons learned", which all too often has focused on what went wrong and who is to blame, rather than focusing on why things went wrong, and what can be improved to reduce these incidents in the future. Amendments 38 and 47 are linked to this.

In the unlikely event that it is deemed not to be appropriate to publish the full child safeguarding practice review following an incident, Clauses 12 and 16 require the panel and safeguarding partners for national and local reviews respectively to publish certain information about the case. Amendments 38 and 47 specify that the information published, in the absence of the full report, should relate to the,

"improvements that should be made",

rather than the "lessons to be learned".

Amendment 41 adds to new Section 16B(9), inserted by Clause 12, a definition of who the safeguarding partners are. This is necessary as Amendment 37 introduces the safeguarding partners into new Section 16B(2). I beg to move.

Lord Hunt of Kings Heath: My Lords, I think we should welcome this and thank the Minister for listening to what was said in Committee. I take it that in setting out an improvement agenda, which is to be welcomed, the Government will, of course, draw on lessons that will have been learned from cases that have gone wrong. As I understand it, these should be used in a non-punitive way, as much more a learning experience.

Amendment 37 agreed.

Amendments 38 and 39

Moved by Lord Nash

38: Clause 12, page 11, line 29, leave out "lessons to be learned from the case" and insert "improvements that should be made following the review"

39: Clause 12, page 11, line 31, leave out “The arrangements under subsection (1) may include arrangements” and insert “Regulations under this section may include provision”

Amendments 38 and 39 agreed.

Amendment 40

Moved by Lord Warner

40: Clause 12, page 12, line 10, at end insert—

“(c) handling the implications for a local authority’s discharge of their safeguarding responsibilities in respect of any judicial decision-making in a particular review.”

Lord Warner: My Lords, we now turn, slightly later at night than I would have liked, to Amendment 40 in my name, which seeks to encourage the Secretary of State to cover in guidance what happens when the actions of a court have implications for the way that a local authority discharges its safeguarding responsibilities but these cannot be considered by the new Child Safeguarding Practice Review Panel.

I have framed this amendment in the way I have because of my considerable concerns about what happened in the tragic case of Ellie Butler, who was placed by the court with her father, who brutally murdered her some months later. We went over that ground in Committee and I am grateful to the Minister for the letter he wrote to me on 9 September—I think he copied it to other Members who spoke in those Committee debates. However, that letter raises more questions than it answers.

Leaving aside the devastating consequences of the judge’s error of judgment—for which, incidentally, I would say a social worker would have been publicly crucified—the case raised some serious systems issues that the new review panel apparently cannot explore, because the Government are ruling that it would be unconstitutional for the panel to review the conduct of a judge. Yet the Minister’s letter makes it clear that the guidance in *Working Together*, published in 2015, does not specify that the judiciary is exempt from the serious case review process. We have here a conflict between what the Government’s guidance says and what the Minister is saying during the passage of the Bill.

This ruling by the Ministry of Justice that it is unconstitutional seems to mean that no learning can take place from erroneous behaviour by the courts. This is particularly important in this case, because of the judge’s rulings in relation to the local authority, which I think has also been discussed between the London Borough of Sutton, the MoJ and the Minister’s department. The judge’s ruling in relation to Ellie Butler meant that the London Borough of Sutton, which had been responsible, with some success, for protecting Ellie became debarred from exercising the safeguarding responsibilities conferred on it by Parliament. Sutton had been exercising its statutory duty to safeguard children in the borough—a duty, as I say, conferred on it by Parliament.

However, the judge appointed two private independent social workers to review the local authority’s decision-making. These seem to have advised that it was safe to place Ellie with her parents, a diametrically opposed view from that of the local authority which had

been safeguarding this child. These social workers, commissioned by the court, appear to have had no background experience of Ellie’s situation and to have been a small partnership without the back-up resources and supervision, including legal resources, of a local authority. My understanding—the Minister may want to confirm or deny this—is that entities such as those independent social workers are unregulated. They will be on the register as a social worker but we know no more about them. They are on a panel list but there is no regulation, as I understand it, of partnerships of independent social workers. I would be grateful if the Minister and his department can tell me whether that is correct.

It gets worse, because the judge also seems to have ruled that the local authority should desist from contact with the family, thereby effectively debarring it from discharging its obligations to safeguard Ellie—or, indeed, the other child who, as I understand it, was in that household. Again, I understand that the various agencies were also told to remove information about the father from their records. This is all in the public arena. I am not making this up; it is what happened in this particular case. Sadly, history suggests that there may well be other Ellie Butler cases of some kind, which is why the Government are setting up a very important Child Safeguarding Practice Review Panel at the national level.

If the Government are to set up a new and more powerful national child safeguarding review panel, which I and I think other Members of this House totally support, it seems somewhat bizarre to prevent it exploring behaviour in the courts that could put vulnerable children at serious risk. For example, how are the courts to learn the errors of their ways and be provided with guidance and training? Perhaps as worrying is the clear lesson from this case that a court can apparently set aside a statutory duty placed on local authorities by Parliament to safeguard children in their area. To say the least, this is a very confusing situation in which to place local authorities and their hard-working social workers.

I know that there is supposed to be, or may have been, a meeting between the London Borough of Sutton and the President of the Family Division, but I am most intrigued about what the Family Division will do regarding this case. Will it give guidance to judges? Will it affect the training of judges in cases of this kind? Who knows? What we now have is a cloak of silence over what happens in the courts when something goes badly wrong.

My belief is that the Government should at the very least accept an amendment of the kind that I have produced. It would require the Secretary of State to make it clear in guidance what actually happens if the courts are to be excluded from the work of the new safeguarding review panel. How are social services departments to behave and learn from that experience? What relationship will there be with the Ministry of Justice and the courts for learning from mistakes, which will from time to time inevitably be made in the courts? Judges are human beings and not perfect. From time to time, they make mistakes. At the least, we have to make it clear in the guidance that goes out

[LORD WARNER]

to local authorities about this new panel how they should deal with a situation of the kind that arose in this case. I beg to move.

Baroness Pinnock: My Lords, I thank the noble Lord, Lord Warner, for raising this issue. It looked a fairly innocuous amendment when I read it in the Marshalled List but out has come a really powerful case, based on an actual case that went before the courts, for a change in the Government's legislation. So far as I can tell, there have been no answers as a result of that appalling tragedy, which was partly brought about by the judgment of the courts. The noble Lord, Lord Warner, is challenging the Government to be as responsive to errors in the courts as they are to errors in social services safeguarding practices. There is a case to be answered and I look forward to the Minister's response.

9.15 pm

Lord Hunt of Kings Heath: My Lords, clearly there are huge constitutional issues around the independence of the judiciary and there would be a very strong view in your Lordships' House of the need to protect at all costs that independence in the judgments they make. Equally, what we would like from the Minister is some assurance that, in the generality of judicial actions in this area, there is at least some work in relation to lessons to be learned. The change in the wording from "lessons learned" to "improvement" reinforces the case that the impact of judicial decisions must surely be considered as part of a general improvement agenda, without in any way seeking to interfere in the role of the judiciary and, of course, its judicial independence.

Lord Nash: My Lords, I am grateful to the noble Lord, Lord Warner, for this amendment and for the important issue that he has raised. As noble Lords will recall, in Grand Committee he raised the role of the judiciary in serious cases involving children, with particular reference to the tragic case of Ellie Butler. I have since written to him further on this matter, as he said. Noble Lords will also recall that, in the Butler case, Ellie's father had his conviction for grievous bodily harm in relation to injuries suffered by Ellie overturned by the Court of Appeal. Later, a finding of fact judgment, which took place as part of care proceedings, was also overturned. That led to the return of Ellie and her sibling to the care of her parents, a process overseen by an independent social work agency under instruction from the court, as the noble Lord, Lord Warner, has said. Tragically, within a year of being returned to her parents, Ellie was murdered by her father.

No one can fail to have been moved by the circumstances of that case, and it is understandable that queries have been raised about the impact of judicial decisions in particular cases, and the role of the judiciary in the serious case review process more generally. However, as the noble Lord, Lord Hunt, has mentioned, the judiciary is independent and, for constitutional reasons, it cannot and should not be held to account by the current serious case review process, or, in future, by the Child Safeguarding Practice Review Panel. This does not mean that there is no

process for responding to decisions made by judges—which may be appealed at the time. Alternatively, if there is concern about a judge's conduct, a complaint may be made to the Judicial Conduct Investigations Office.

I appreciate the noble Lord's concern—which he has also put in writing to me—about the potential impact of judicial decision-making on the ability of local authorities to discharge their statutory functions. I agree that this may be a matter which reviews carried out on behalf of the panel could highlight. The noble Lord will appreciate that, through this Bill, it will be the role of the Child Safeguarding Practice Review Panel to identify serious child safeguarding cases that raise issues which are complex or of national importance and to supervise the production and publication of reviews. The panel will certainly be concerned to make recommendations, through its reviews, as to what improvements should be made by safeguarding partners or others in respect of the safeguarding and welfare of children. Where such recommendations relate to, or could relate to, judicial practice, the Department for Education will continue to work closely with colleagues from the Ministry of Justice to communicate these recommendations to the judiciary, so that the judiciary can consider what, if any, impact there should be on judicial practice. Judicial practice does, of course, remain a matter for the judiciary itself.

It is not that the panel cannot review and make recommendations; it can. It just cannot direct the judiciary, although we will work with it to make sure that lessons are conveyed. Given the panel's remit and concerns that have been expressed regarding the need for the panel to be independent of the Government, I do not feel that it would be appropriate to include guidance from the Secretary of State to the panel on this issue. The panel must be free to set its own terms of reference for individual reviews, and I would expect this to include consideration of how a local authority has discharged its safeguarding responsibilities under all circumstances—or if, indeed, it had had difficulty in discharging them for whatever reason. Indeed, this consideration would also apply to all other agencies and could be a significant finding in a review leading to improved practice across the country. However, as each case will be different, general guidance to address what will be a case-by-case consideration is not likely to be beneficial or practicable.

On whether independent social workers are regulated, I assure the noble Lord that all social workers are professionally regulated. In view of this, I hope that he will be reassured about the scope of the panel's functions, including the need for the panel to be able to treat each situation on a case-by-case basis and make the recommendations it sees fit, and therefore will feel able to withdraw the amendment.

Lord Warner: I am partially reassured. The Minister mentioned appeals, but they can take a very long time, and there is a very good chance that Ellie would have been dead before an appeal was heard in her case.

There is another constitutional issue, which is that judges should not be able to change the law. In this case, the judge changed the law and inhibited the local authority in discharging its statutory safeguarding

duties. I ask the Minister to think a bit more about this and to look at the guidance in *Working Together to Safeguard Children* because it is not consistent with what he has said today. I beg to leave to withdraw the amendment.

Amendment 40 withdrawn.

Amendments 41 and 42

Moved by Lord Nash

41: Clause 12, page 12, line 13, at end insert—

““safeguarding partners” means persons who, under section 16E, are safeguarding partners in relation to one or more local authority areas in England (see subsection (3) of that section);”

42: Clause 12, page 12, line 21, at end insert—

“() In section 66(3) of that Act (regulations subject to affirmative procedure) after “12B(1)(b)” insert “, 16B.””

Amendments 41 and 42 agreed.

Clause 13: Events to be notified to the Panel

Amendment 43

Moved by Lord Nash

43: Clause 13, page 12, leave out lines 25 to 34 and insert—

“(1) Where a local authority in England knows or suspects that a child has been abused or neglected, the local authority must notify the Child Safeguarding Practice Review Panel if—

- (a) the child dies or is seriously harmed in the local authority’s area, or
- (b) while normally resident in the local authority’s area, the child dies or is seriously harmed outside England.”

Lord Nash: My Lords, I shall speak first to Amendments 43 and 44, which concern changes to Clause 13. These changes remove the duty on local authorities to notify the Child Safeguarding Practice Review Panel of deaths of children in regulated settings and of looked-after children. Under the original wording of the clause, notifications would have been required irrespective of whether these children had been abused or neglected. I assure noble Lords that this in no way weakens the scope of the panel’s powers. All cases where the local authority knows of or suspects abuse or neglect, including of looked-after children and of children in regulated settings, such as children’s homes and secure institutions, must still be notified to the panel under the general duty to notify cases of death or serious harm. These amendments will mean that cases for which the panel has no specific remit should not be notified.

The addition of a new notification criterion under new Section 16C(1)(b) clarifies that it is the responsibility of the local authority where the child is normally resident to notify when a child dies or is seriously harmed while outside England and when abuse or neglect is known or suspected. This responsibility to notify when the child dies or is seriously harmed while outside England will provide local authorities with clear accountability for notifying such events.

I should stress that “outside England” includes where the incidents occur in the devolved Administrations as well as overseas. I should also stress that local authorities will be obliged to notify only incidents of which they are aware and which they know or suspect meet the criteria. The provision will enable the panel to consider potentially serious events that occur outside England. The amendment also makes clear which local authority is responsible for notifying relevant events that take place within England. By making the local authority in which an incident occurs responsible for the notification, it is more likely that incidents will be notified swiftly.

Amendment 44 is a technical change in response to changes made by Amendment 43. The removal of paragraph (d) of new Section 16C(1) means that the requirement for regulated settings to be given a meaning in regulations is redundant.

I shall speak also to Amendments 49, 50 and 51, concerning child death reviews. Amendment 49 provides further clarification of the scope of the child death review arrangements. It will explicitly enable child death review partners to review the death of a child not normally resident in their local area in order to ensure that improvements can be made, especially in the area where the death occurred. Amendment 50 is a minor technical amendment to allow for the introduction of Amendment 49. Amendment 51 sharpens the terminology of what should be reviewed and analysed by child death review partners by making it clear that they should review the death or deaths relevant to the welfare of children in the area or to public health and safety.

Clarifying the powers of the child death review partners to enable them to review the deaths of children not normally resident in the area will increase the opportunities for improvements in learning with regard to child deaths. For example, if a child normally resident out of the country dies as a result of an accident in a play area in an English local area, it is currently unlikely that the learning from that death will be disseminated to the local area in which the child died. We want to improve the opportunities for local areas to identify what more can be done to reduce the risks of any child dying, whether or not they are normally resident in the relevant local area. These amendments will clarify the responsibilities of child death review partners to do this where they consider it appropriate. I beg to move.

Baroness Wheeler (Lab): My Lords, I thank the Minister for his introduction to this group of amendments and I will be brief. As we stated in Committee, we broadly welcome the section on the child death reviews, and now these amendments that address the outstanding issues and concerns that were raised. In particular, we note the Government’s response in Amendments 43 and 44 to the Delegated Powers and Regulatory Reform Committee’s concerns in its first report on the Bill that the Bill should contain a definition of the regulated settings in which a child death would trigger a notification to the safeguarding practice review panel. The committee rightly underlined that the definition of regulated settings would be fundamental in determining the scope of a local authority’s duty to provide information about cases to the panel.

[BARONESS WHEELER]

The Minister, in his response letter of 11 October to the committee, and now in Amendment 43, has, in our view rightly, come to the conclusion that a broader definition under Clause 13 of notification by local authorities to the panel of a child's death or of serious harm should also apply to looked-after children and children in any other regulated setting. Amendment 44 therefore removes the reference to regulated settings from the Bill, and we welcome this.

Amendment 49 enables child death review partners to review child deaths taking place in an area where children are not normally resident. We welcome this, too, in addition to the related powers that they will have to seek and analyse information related to such cases. The Wood review into the role and functions of local safeguarding children's boards and children's deaths overview panels highlighted the substantial problems in gathering and analysing data on child deaths. This proposal, combined with the general obligations that will be imposed with regard to gathering, providing and reporting will, I hope, begin to address this important issue.

Amendment 43 agreed.

Amendment 44

Moved by Lord Nash

44: Clause 13, page 12, leave out lines 39 and 40

Amendment 44 agreed.

Clause 15: Local arrangements for safeguarding and promoting welfare of children

Amendment 45

Moved by Lord Nash

45: Clause 15, page 14, line 10, at end insert—

“() In section 66(3) of that Act (regulations subject to affirmative procedure) after “16B,” (inserted by section 12) insert “16E(3).”

Amendment 45 agreed.

Clause 16: Local child safeguarding practice reviews

Amendments 46 and 47

Moved by Lord Nash

46: Clause 16, page 14, leave out lines 21 to 24 and insert—

“() The purpose of a review under subsection (1)(b) is to identify any improvements that should be made by persons in the area to safeguard and promote the welfare of children.”

47: Clause 16, page 14, line 37, leave out “lessons to be learned from the case” and insert “improvements that should be made following the review”

Amendments 46 and 47 agreed.

Clause 17: Further provision about arrangements

Amendment 48

Moved by Lord Nash

48: Clause 17, page 15, line 25, at end insert “(but the regulations may not create criminal offences)”

Amendment 48 agreed.

Clause 23: Child death reviews

Amendments 49 to 51

Moved by Lord Nash

49: Clause 23, page 18, leave out line 11 and insert—

“(1A) The child death review partners may also, if they consider it appropriate, make arrangements for the review of a death in their area of a child not normally resident there.

(1B) The child death review partners must make arrangements for the analysis of information about deaths reviewed under this section.”

50: Clause 23, page 18, line 12, leave out “subsection (1)” and insert “this section”

51: Clause 23, page 18, line 13, leave out “death, or the deaths generally,” and insert “death or deaths”

Amendments 49 to 51 agreed.

Consideration on Report adjourned.

House adjourned at 9.29 pm.

Grand Committee

Tuesday, 18 October 2016

Arrangement of Business *Announcement*

3.30 pm

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, before we begin, I remind your Lordships of the usual arrangement—if there is a Division in the Chamber, we adjourn immediately for 10 minutes.

Misuse of Drugs Act 1971 (Amendment) Order 2016

Motion to Consider

3.30 pm

Moved by Baroness Williams of Trafford

That the Grand Committee do consider the Misuse of Drugs Act 1971 (Amendment) Order 2016.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this order was laid before Parliament on 20 July. I am very grateful to the Advisory Council on the Misuse of Drugs for its world-class advice. It is the council's recommendations that have prompted the order before your Lordships today.

The order relates to a group of synthetic cannabinoids, captured by a generic definition, and to dienedione, an anabolic steroid. The order would amend the generic definition of synthetic cannabinoids in Schedule 2, Part 2 of the 1971 Act, to include the new group as class B drugs. This will make it an offence to possess, produce, import, export, supply or offer to supply these drugs without Home Office licence. The order will insert dienedione into Schedule 2 Part 3 of the Act, as a class C drug. Similar to other anabolic steroids, dienedione will be exempted from the Act's possession offence.

The psychoactive effects and harms of the third generation synthetic cannabinoids proposed to be controlled by the order are reported to be similar to cannabis and other synthetic cannabinoids already controlled under the 1971 Act. A number of substances with legitimate medicinal applications have been specifically exempted from the definition, along with some substances already controlled as class A drugs. There are no known legitimate or recognised uses of the remaining compounds beyond potential research.

The ACMD advises that the potential physical and social harms of dienedione would be commensurate with those of other anabolic steroids. It notes that the substance can alter the growth of skeletal muscle and bone as well as the differentiation, growth and maintenance of the reproductive system and sexual characteristics in men.

The ACMD considers that these substances are being, or are likely to be, misused, and that misuse is

having, or is capable of having, harmful effects sufficient to constitute a social problem. For this reason, my honourable friend the Minister for Vulnerability, Safeguarding and Countering Extremism, accepted the advisory council's advice that these substances should be subject to this order.

In due course it is intended to make two further related negative statutory instruments to come into force at the same time as the order. This will add dienedione and the third generation synthetic cannabinoids to the appropriate schedules to the Misuse of Drugs Regulations 2001. The Misuse of Drugs (Designation) Order 2001 will also be amended to designate these synthetic cannabinoids, as they have no recognised legitimate uses outside of research.

The order, if made, will provide enforcement agencies with the requisite powers to restrict the supply and use of these harmful substances in this country. We know that the law change cannot, on its own, deter all those inclined to use or experiment with these drugs. However, we expect the order to have a notable impact on their availability. This will also provide a clear message to the public that the Government consider these substances too dangerous to health to allow them to circulate in the UK.

Lord Jones (Lab): My Lords, I thank the Minister for her cogent and precise explanation of this draft statutory instrument. I am not able to discern from looking at the papers before us whether the Misuse of Drugs Act 1971 (Amendment) Order 2016 as a statutory instrument has any reference to Wales. Perhaps the Minister's officials may be able to advise her. My guess is that it does not, but perhaps the information can come forward for the convenience of the Committee via officials. If it is not applicable, are we able to understand today how it may indirectly be applied to the Principality? Some information would be helpful. Even though more and more Members of your Lordships' House have a link to and a residence in Wales, it is harder and harder to obtain information about the Principality given the establishment of the Welsh Assembly.

Lastly, and with no great seriousness, looking at the Explanatory Note and at the last list of substances that have legitimate medical uses, can I invite the Minister—who has great ability—for the convenience of the Committee to pronounce the last three substances?

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Baroness for her explanation of the order before us today and say at the outset that we fully support them and what the Government are trying to do. I see in my briefing note that synthetic cannabinoids are also known as Spice, which I will use as it is easier. There were 29 deaths from these drugs in 2011 and that figure rose to 67 in 2014. Spice can cause aggression and delusions and worsen mental conditions and clearly is a very dangerous substance. We must do what we can to get it off the streets.

Figures from the Centre for Social Justice show that officers from 32 police forces attended 3,807 incidents in 2014, up from 1,400 the previous year. The Prison Ombudsman reported that between June 2013 and January 2016 there were 58 fatalities where the prisoner

[LORD KENNEDY OF SOUTHWARK]

was thought to be, or suspected of being, involved with the substances before their death.

I do not know whether the Minister has any evidence or any information regarding admissions to A&E departments. I am sure there will be a number of these and ones where these drugs were taken with other substances. As I said, I fully support the order but I have a number of other points and questions for the Minister. If she cannot answer them now I would be very happy for her to write to me.

These drugs are still covered by the Psychoactive Substances Act so why are we moving across to the Misuse of Drugs Act? There is also a possession offence with this Act. How is that going to be policed? It would also be helpful if the Minister could say something about how schools, colleges and universities deal with young people's exposure to these drugs and more generally about the quality of drug and alcohol education provision. I understand that the drugs strategy is going to be published in the next few weeks. Can she say a bit more about that, particularly about education and prevention? Does she see an intelligence gap in our ability to police the levels of Spice in the UK, being imported into Britain and being stockpiled? I am conscious that she may not be able to answer these questions here, and I am content with the order.

Baroness Williams of Trafford: My Lords, I thank all noble Lords who have contributed to the debate, and I shall go through the various questions they have asked. The noble Lord, Lord Jones, mentioned the fact that no reference is made to Wales, but these orders apply to England and Wales. He asked about the last three substances mentioned in the order—telmisartan, viminol and zafirlukast. The noble Lord wants to intervene.

Lord Jones: Only to congratulate the noble Baroness on her pronunciation.

Baroness Williams of Trafford: I thank the noble Lord. The noble Lord, Lord Kennedy, has rightly outlined the very real harms associated with Spice, in particular in prisons. A documentary I saw about the drug highlighted the terrible effect it is having on the streets of Manchester. In terms of the number of admissions to A&E departments, I do not have that figure today, but if we have it, I will provide it for him. However, I cannot think that even indirectly it does not contribute to emergency hospital admissions because of the general effect it has on the person who is using it. Moreover it is very cheap, which is why it acts as a pull on those who have less access to money than others.

The noble Lord also asked about the crossover from the psychoactive substances legislation to the Misuse of Drugs Act. Given the reported risks and the known harms that the substances are already known to pose to public health, the ACMD had previously advised that they warrant control under the misuse of drugs legislation. The control utilises the stricter offences of production and distribution without a licence under any circumstances, which I am sure that the noble

Lord will be pleased about, as well as the possession offence. That can impose a higher maximum sentence. These stricter penalties for offences will prove to be a stronger deterrent to the supply of these substances. I repeat what I said in my opening remarks: there is no known medicinal use for them.

The noble Lord asked about the drugs strategy. As he knows it is currently being developed and we will continue to build on the 2010 strategy to take a balanced approach and tackle drug misuse as a pre-driver of crime. We aim to publish the strategy shortly. I know that your Lordships do not like the word "shortly", but we are planning to release it soon.

The noble Lord also talked about education and prevention, which for me is the key point in this: how do we deter our young people from taking these poor lifestyle choices in the first place? We have an online resilience-building resource called Rise Above which is aimed at 11 to 16 year-olds. It provides resources to help to develop the skills young people need to make positive choices for their health, including avoiding drug use. We also have FRANK, the Government's drug information advice service that many noble Lords will have heard of. It continues to be updated to reflect new and emerging patterns of drug use and it evolves to remain in line with young people's media habits. Moreover, Public Health England has developed its role in supporting local areas in terms of sharing evidence to support the commissioning and delivery of effective public health prevention activities. I think that I have answered all the questions put by noble Lords, and with that I beg to move.

Motion agreed.

Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 *Motion to Consider*

3.45 pm

Moved by Lord Bourne of Aberystwyth

That the Grand Committee do consider the Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I beg to move that the draft Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016, which were laid before the House on 14 July, be approved and come into force on 31 October. If approved, the regulations will, first, set out the time provided for local authorities to comply with the duty to grant sufficient planning permission to match demand on their self-build and custom housebuilding registers; and, secondly, provide for local authorities to charge fees for those to enter or remain on their self-build and custom housebuilding registers on a cost recovery basis.

This Government are committed to driving up housing supply, and promoting and supporting self-build and custom housebuilding are integral to delivering on that commitment. Doubling the number of self-build and custom build houses by 2020 will not only create much needed new homes but enable more people to live in homes designed by them to meet their specific needs. It will also provide welcome new business opportunities for smaller housebuilders, support and create new jobs, and drive innovation in alternative building techniques.

To take forward this commitment, we passed the Self-build and Custom Housebuilding Act, introduced in another place last year by the honourable Richard Bacon, and Sections 9 to 12 of the Housing and Planning Act earlier this year. The Self-build and Custom Housebuilding Act 2015, which the noble Lord, Lord Best, took through this House, came into force on 1 April this year. As a result, for the first time all local planning authorities have been required to keep a register of those who wish to build or commission their own home in their area and to have regard to that register when carrying out their housing, planning, land disposal and regeneration functions.

A fundamental barrier to more people building or commissioning their own homes is the lack of suitable available plots for self-build and custom housebuilding. These regulations, together with the Self-build and Custom Housebuilding Regulations 2016 that were laid in Parliament last week, are the final component of our legislative framework to support the doubling in size of the self-build and custom housebuilding sector. If approved, they will be critical to increasing the availability of land for self-build and custom housebuilding in England. They will require local authorities to grant enough planning permissions to match demand on their registers within three years of the year in which those entries are made in the register, ensuring that land for self-build and custom housebuilding is made available in a timely manner. This strikes the right balance between ensuring that authorities have sufficient time to identify suitable land and satisfying the need of those seeking land to build or commission their own home quickly.

The regulations also allow local authorities to charge a fee to those to be entered on their register and, where the number of entrants on the register count towards the number of plots for which an authority must grant planning permission, for them to charge an annual fee in subsequent years while the person remains on the register. It is important that authorities are able to charge fees only on a cost recovery basis. This will ensure that any fees charged are reasonable and reflect the costs incurred by the authorities.

Self-build and custom housebuilding have the potential to play a significant role in securing greater diversity in the housing market, as in other parts of Europe. We are fully committed to doubling the size of the self-build and custom housebuilding sector and we want it to become a mainstream form of housing, enabling more people to design their own homes to meet their specific needs. These regulations will increase opportunities for aspiring self-build and custom housebuilders to

realise their ambitions of designing and building their own homes. I therefore commend the draft regulations to the Committee.

Lord Kennedy of Southwark (Lab): My Lords, I will start my brief remarks by making my usual declarations that I am an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. I fully support the regulations before us today. They are a welcome boost to increasing the amount of self-build and custom-built homes in the UK. We have a number of self-build plots in Lewisham and I support them. I like the idea of new homes and innovation and it is very good if people are able to build properties themselves if they want to. Being able to double the number of plots and houses available would be very positive.

A week or two ago, we had a very interesting debate on housing. More generally, I hope we now all accept the need to increase the number of houses built for various tenures. It irritates me when people sometimes suggest that it is councils that hold back planning permission for property generally. In fact, we often agree permission for housing and then nothing happens. I hope that, in agreeing these regulations today, and looking for more plots, the Minister will also take a wider look at the whole question of planning and what we can do about plots of land with multiple permissions but on which nothing ever happens. Perhaps we can make some of those plots available for someone else to build more self-build houses. The real problem we need to look at is building more houses of different types. However, these regulations are very good and I am happy to support them.

Lord Jones (Lab): My Lords, I thank the noble Lord, Lord Bourne, for the clear and resonant tones in which he spoke to the instrument. These were, no doubt, honed in the Wales Assembly—where he had a distinguished role and no little success—and a Welsh university.

My first brief question, with which, perhaps, his officials can help, is: how much self-building has occurred in previous years in England? Is there a record of self-builds for England in a recent year? Secondly, what sort of fees are paid individually on a self-build in England in a reasonably modest location? Is it possible for him to respond to those two questions? My third question, which I suspect he will not be able to advance on, is regarding any details concerning Wales.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords for participating in this debate and for the support that they have given to these regulations. I thank the noble Lord, Lord Kennedy, for his support and that of the Official Opposition in the House of Lords. I recognise that his borough of Lewisham is doing some innovative work in this area, as are other London boroughs and other areas in England. I will respond to the issues raised by the noble Lord, Lord Kennedy, and the noble Lord, Lord Jones. I thank the latter very much for his kind remarks about my honing of skills in the National Assembly for Wales, of which

[LORD BOURNE OF ABERYSTWYTH]

I have very fond memories. I met with the First Minister in the House of Lords yesterday. We were in danger of being in our anecdote discussing the National Assembly last night, but that is another issue.

Self-builds in England are currently running at about 10,000 a year. They have been somewhat higher than that—it varies from year to year. As I have indicated, our aim is to double that figure by 2020. In the whole of the United Kingdom, they are running at about 12,000 a year. On continental Europe, the figures are much higher. About 7% to 10% of our housing completions are self-build. At the other end of the scale, about 80% of housing completions in Austria are self-build. In Sweden, it is around 63%; in Germany and France, about 60%; in the Netherlands it is also high. We are very different from continental Europe. There is a desire on the part of people in this country to design and build their own home, partly no doubt engendered by television programmes such as “Grand Designs” with Kevin McCloud. One of the side effects of this is it will improve the design of the houses that we have. If people are designing their own homes, they will be keen for that design to contribute to the general ambience and be of a high standard. I do not have an average cost for self-build—that will vary enormously from area to area and from house to house—but it is competitive with normal build, which is obviously in response to the desire people have to build their own home.

On a more general point made by the noble Lord, Lord Kennedy, he will know that we are bringing forward a housing White Paper this autumn that will address some of the issues we need to address to build more houses in this country. He will know that the Prime Minister is making this a high priority for the Government, which has already been indicated by the commitment of resources and the recent announcement by my right honourable friend the Secretary of State, Sajid Javid, of £3 billion for housebuilding, £1 billion of which could be directed in this area. Therefore we have committed resources to this and we regard it as important.

Once again, I thank noble Lords for their support and I commend these draft regulations to the Committee.

Motion agreed.

Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016

Motion to Consider

3.56 pm

Moved by Lord Dunlop

That the Grand Committee do consider the Human Trafficking and Exploitation (Scotland) Act 2015 (Consequential Provisions and Modifications) Order 2016

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, it is appropriate that we should be considering

this order today, as today is Anti-Slavery Day. The order before your Lordships is made under Section 104 of the Scotland Act 1998, which allows for “necessary or expedient” changes to UK legislation in consequence of an Act of the Scottish Parliament. The Act in this case is the Human Trafficking and Exploitation (Scotland) Act 2015. To summarise, the objective of the Act is to consolidate and strengthen the existing criminal law in Scotland against human trafficking and exploitation and to enhance the status of and support for the victims of these crimes. After passing through the Scottish Parliament, the Act received Royal Assent on 4 November 2015.

The 2015 Act is in six parts. Part 1 introduces two new offences: a new single offence of human trafficking for all types of exploitation and a new offence of, “slavery, servitude and forced or compulsory labour”.

These replace existing offences in Scots law. The maximum penalty for human trafficking has increased from 14 years to life imprisonment. Part 2 includes provision on the support and assistance to which adult and child victims of human trafficking are entitled. The remaining parts deal with, among other things, the confiscation of property and proceeds of crime, in Part 3, and the introduction in Part 4 of two new preventive and risk orders in Scotland. In Part 5 the Act also places a duty on Scottish Ministers to prepare a trafficking and exploitation strategy.

As I said, if passed, this draft order would amend UK legislation as a consequence of the Act. The order updates existing UK legislation to give the 2015 Act full effect: to reflect the new Scottish offences, to ensure that the relevant powers of UK immigration officers are updated in line with the new offences so that they are able to detain vehicles, ships or aircraft where a person has been arrested for the offence of human trafficking, and to reflect new powers conferred on the police under the 2015 Act.

The order will, for example, update references to existing Scottish offences in relevant legislation applying in other parts of the UK. These changes, primarily to the Modern Slavery Act 2015 but also to the Immigration Act 1971 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, will refer to the new single offence of “human trafficking” and the new offence of slavery, servitude and forced or compulsory labour in Scottish legislation and the repeal of existing offences.

The order will enable English and Welsh courts to enforce the two new Scottish trafficking and exploitation prevention and risk orders, which will ensure joined-up and robust enforcement. It will also implement the policy intention of some aspects of the Modern Slavery Act 2015 that relate to Scotland by ensuring the scope of the UK’s Independent Anti-Slavery Commissioner’s work and the duty of large companies to report on transparency in supply chains are both updated so that, in Scotland, these flow from the new Scottish offences.

The UK and Scottish Government Ministers and officials have worked closely together to ensure that this order makes in an effective manner the necessary amendments to UK legislation in consequence of the Act of the Scottish Parliament. I believe that this

order demonstrates the UK Government's continued commitment to working with the Scottish Government to make the devolution settlement work.

I hope noble Lords will agree that this order is an appropriate use of the powers in the Scotland Act and that the practical result is something to be welcomed. I commend the order to the Committee.

Lord Hope of Craighead (CB): My Lords, I am very grateful to the Minister for his careful introduction to this draft order. I should point out at the very outset that it goes without saying that I am entirely in sympathy with the aims of the Act itself and the draft order for the reasons which the noble Lord has given. The reason I have risen to my feet is to draw attention to two problems with the wording of Article 2, which deals with the detention of a "vehicle, ship or aircraft" in circumstances where a person has been arrested and there are "reasonable grounds" for thinking that it might be forfeited. The article itself is very well laid out and extremely clear in its terms, and it is only because of the clarity of the terms and the way it is laid out that two matters have come to my attention which I respectfully suggest may require further thought.

The broad structure is to identify first the power to detain in paragraph (1) of Article 2. The second is paragraph (2) of Article 2, which says that the,

"vehicle, ship or aircraft may be detained",

until certain things have happened. It is important for the protection of the individual who owns the article in question, be it a vehicle, ship or aircraft, that the date at which the detention comes to an end—if, indeed, it is to be released from detention—is clearly identified. One has in mind, of course, Article 1 of Protocol 1 to the European Convention on Human Rights, which gives a right to the peaceful enjoyment of one's possessions, of which one may be deprived only in the public interest and subject to conditions prescribed by law. This is fulfilling the requirement that the conditions should be prescribed by law and it is important that they should be properly set out.

If one works through Article 2(2), one sees that the detention may come to an end when a decision is taken as to whether or not to begin solemn proceedings or, if solemn proceedings are begun against a person arrested for the offence, until certain things happen. I have no complaint about sub-paragraph (a); it is sub-paragraph (b) that begins to open up some possible points of difficulty. Where solemn proceedings are begun, they may result in the acquittal of the individual, which is set out there. That indeed would be a point at which the article would be released from the detention. Heading (ii) refers to conviction and identifies correctly that the question of whether the article is released from detention will depend on whether the High Court or the sheriff, as the case may be,

"decides whether or not to order forfeiture".

When that decision is taken, if it is not to order forfeiture, it is clear that the detention comes to an end. The problem arises when one looks at heading (iii), which uses the phrase "proceedings are otherwise

concluded". Very properly, the drafter has gone on to seek to identify the stage at which proceedings are otherwise concluded. It begins by saying:

"For the purposes of paragraph (2) ... solemn proceedings begin"—

in well-understood circumstances where there is a first appearance or the indictment is served. I have no problem with that part of the article. The problems arise when looking at paragraph (3)(b), which says that, "proceedings are taken to be otherwise concluded if ... the proceedings are deserted simpliciter".

That is a very clear point of time. When the Crown deserts proceedings simpliciter they are brought absolutely to an end, there are no further proceedings and it is perfectly proper that the article should no longer be detained. It identifies the point of time very accurately.

Under heading (ii), however, we are dealing with a different kind of desertion of proceedings, "pro loco et tempore", which is a phrase used in the Scottish courts for the situation where the prosecutor decides that the case cannot proceed for the time being because, for example, the witness is seriously ill or absent and the Crown simply cannot lead the evidence needed to enable the proceedings to go on. The judge or the sheriff, as the case may be, has to decide whether it is proper that proceedings should be stayed temporarily for that purpose. He may refuse to do that, in which case it may be that the Crown is driven to deserting the proceedings simpliciter, but we are dealing with a situation where a decision is to accede to the Crown's request that the proceedings be deserted "pro loco et tempore", and,

"no further trial diet is appointed".

The problem with that concluding phrase is that it leaves in the air the date at which one knows for certain that there will be no further trial diet. Under the Scottish system, the prosecution is entirely in the hands of the Lord Advocate. With great respect, I suggest that it might be better to clarify in some way the point of time at which one can be certain that no further trial diet will be appointed. That is frequently done by the Crown Office writing to the accused saying that it has decided to take no further proceedings. If a letter of that kind is written, it binds the Crown not to proceed any further and the date of the letter is be the date on which one knows for certain that the vehicle, ship or whatever it is should no longer be detained. The better way in which to phrase it might be for a certificate by the Lord Advocate himself or herself to be obtained which would identify his or her decision that there should be no further proceedings. That would achieve absolute clarity and ensure that the decision was ultimately taken by the law officer. Given the importance of what we are dealing with, which is really a very serious crime indeed, it would be best to obtain his or her decision that there should be no further proceedings.

The same point arises in paragraph (4), where we are dealing with three things that are added together. First,

"the indictment falls or is for any other reason not brought to trial".

Secondly,

"the diet is not continued, adjourned or postponed",

[LORD HOPE OF CRAIGHEAD]

and, thirdly,

“no further proceedings are in contemplation”.

I do not have any problem with the first two, but with the last one, how does one know that,

“no further proceedings are in contemplation”?

Again, the suggestion is that the best way of ensuring certainty about that would be to obtain a certificate from a law officer—preferably the Lord Advocate—which would identify the decision at that level that there should be no further proceedings.

There are some situations in which a statute intervenes to say that if proceedings are not taken within a given period of time the indictment necessarily falls. In summary proceedings there is a cut-off date of, I think, six months—it may be 12 months—but when one is dealing with proceedings on indictment, as we are here, there is generally no absolute cut-off date in Scots law. I am subject to correction but I do not think that the statutes which we are dealing with as background to this order actually lay down a period of time within which the indictment must be brought. One is dealing with this problem in an area where there is no statutory backing to give a certain date at which the detention of the vehicle or whatever it is should be brought to an end, and therefore something has to be written into the order to make this clear.

I emphasise that I am not in any way raising these points to cause problems for the Minister. However, I suggest that in the interests of everybody it is better to be quite sure that one has identified correctly a cut-off date at each of the various stages with which this order is dealing. Article 2 has identified some of them perfectly correctly in accordance with Scots procedure, but in the two paragraphs that I have identified, in Article 2(3)(b)(ii) and Article 2(4)(c), I suggest that there is a lack of clarity and that it would be better for the Minister to take time and advice to see whether that clarity can be provided.

Lord McAvoy (Lab): My Lords, I will take as long as I can so that the Minister can give some attention to what the noble and learned Lord, Lord Hope of Craighead, has said. It sounds fascinatingly complicated to me, but I am sure the Minister’s mind will be applied to it. I thank the Minister for his clear exposition—notwithstanding what the noble and learned Lord said—outlining the procedures, new offences and updating of powers, particularly the co-operation between England and Wales and the fact that the order covers Northern Ireland as well. This is quite sensible co-operation.

As outlined in the Explanatory Notes, the basis of this order, and the basis of the Act passed by the Scottish Parliament, was that the Equal Opportunities Committee of the Scottish Parliament published a report of an inquiry into migration and trafficking in December 2010. That committee heard evidence of problems and issues faced by the diverse migrant communities in Scotland, as well as of the extent of trafficking of persons in Scotland and protection available to victims of trafficking. It also states that the Act makes human trafficking unwelcome—“a more hostile place” is the phrase used. The Scottish Parliament is owed a vote of thanks for turning its attention to this

matter, because Scotland has a regular, steady influx of diverse immigrants into the country. I myself am the grandson of immigrants from County Antrim and County Fermanagh in Northern Ireland. This is particularly so in the west of Scotland, but the central belt as a whole has a track record of receiving migrants and assimilating them into the community. The new wave of immigrants, especially from the European Union, the Far East and Asia, may not have precipitated this, but it brings new issues and problems and new standards for assimilating communities in Scotland. The Scottish Parliament has done a terrific job, and I hope it is successful. I thank the Minister again for outlining the issues involved in this order and look forward with interest to his reply to the noble and learned Lord.

4.15 pm

Lord Dunlop: I thank noble Lords for this short debate. I am particularly grateful, as ever, to the noble Lord, Lord McAvoy, for his offer to occupy the crease—that would be a way to put it—so that I have sufficient time to answer the detailed points made by the noble and learned Lord, Lord Hope. I also thank the noble and learned Lord for giving notice of the questions he intended to ask. He raised a number of detailed points. I recognise that his expertise in Scots law is of an altogether different class to my own. I understand that the wording he refers to is consistent with the wording in the 2016 Act of the Scottish Parliament. I therefore fear that I do not have a clear answer for him on the detailed points he has raised this afternoon. Obviously, however, I undertake to take advice and to consider carefully the points he has raised, and, having done that, I will come back to him in writing to address those points.

I echo what the noble Lord, Lord McAvoy, said. This order is testimony to the joint commitment shown by this Parliament and the Scottish Parliament to take action and to tackle the scourge of trafficking and slavery, and I therefore commend it to the Committee.

Motion agreed.

Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

Motion to Consider

4.17 pm

Moved by Lord Dunlop

That the Grand Committee do consider the Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop): My Lords, to summarise, the Bankruptcy (Scotland) Act 2016 consolidates bankruptcy legislation in Scotland. The Act received Royal Assent on 28 April 2016, having been passed by the Scottish Parliament. The purpose

of the 2016 Act is to consolidate Scottish laws on insolvency and make bankruptcy policy more accessible, both for the money advice community and those experiencing financial difficulties. As with the order we have just discussed, if passed, this order would amend UK legislation as a consequence of the Act. The order is made under Section 104 of the Scotland Act 1998, which allows for “necessary or expedient” changes to UK legislation in consequence of an Act of the Scottish Parliament.

The Bankruptcy (Scotland) Act 1985 has been heavily amended over the years and new primary legislation has been introduced, most recently in the form of the Bankruptcy and Debt Advice (Scotland) Act 2014. Bankruptcy legislation in Scotland has been widely considered to be confusing and difficult to follow, and the need to consolidate the law has been identified. Drafting of the Bankruptcy Consolidation Bill was led by the Scottish Law Commission, which, alongside officials from the Accountant in Bankruptcy, Scotland’s insolvency service, undertook a consultation in 2011 on consolidating bankruptcy legislation before the Lord Advocate brought forward proposals for a Bill. This Scottish primary consolidation legislation therefore brings together and restates all of the Scottish bankruptcy legislation, including the elements from the 2014 Act—a move supported by the money advice and insolvency industry, as reflected in evidence to the Scottish Parliament when it passed the 2016 Act earlier this year.

Some of the provisions that the legislation consolidated must be restated in both Scots law and UK law. For example, Articles 4 and 6 of the order restate provisions on the effect of discharge from debts and on limitation of actions outside Scotland as a result of Scottish bankruptcies. Article 3 restates the current arrangements for examination, in certain Scottish bankruptcy proceedings, of persons residing in parts of the UK other than Scotland. Schedule 1 updates cross-references in statutes across the UK—for instance, to replace references to “the 1985 Act” with references to “the 2016 Act”. Lastly, Article 5 restates minor procedural provisions about powers of the Secretary of State.

The UK and Scottish Governments, Ministers and officials have worked closely together to ensure that this order makes the necessary amendments to UK legislation in consequence of the 2016 Act of the Scottish Parliament. I hope that noble Lords agree that this order is also an appropriate use of the powers in the Scotland Act and a further example of the UK Government’s commitment to work with the Scottish Government to make the devolution settlement work. I commend the order to the Committee. I beg to move.

Lord McAvoy (Lab): My Lords, again I thank the Minister for the exposition of quite a complicated order. Although no formal consultation by the Government has taken place on the order, the Scottish Law Commission consulted fully both on the draft Bill and an accompanying order under Section 104 of the 1998 Act. These are available online. The Scottish Parliament stated in guidance notes on a draft of the order provided for information with the Bill that became the 2016 Act—the consolidation Bill:

“This instrument has no impact of a regulatory nature on the private sector or civil society organisations”.

It said that no significant imposition or reduction of costs was foreseen, that there was no impact on the public sector, and the legislation would not have any significant impact on activities undertaken by small businesses. The effect of the order is purely consequential; it,

“does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required”.

It is quite simple. It is a necessary matter, and has the support of the Opposition.

Lord Dunlop: I am very grateful to the noble Lord for his support. As he has laid out, this order is fundamentally of a technical nature, consolidating legislation rather than making any changes to policy or the devolution settlement. I therefore commend the order to the Committee.

Motion agreed.

Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Motion to Consider

4.24 pm

Moved by Lord Young of Cookham

That the Grand Committee do consider the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2016

Lord Young of Cookham (Con): My Lords, from 1 January 2019 the ring-fencing regime will require structural separation of core retail banking on the one hand from investment banking on the other for UK banks with retail deposits of more than £25 billion. Ring-fencing was the central recommendation of the Independent Commission on Banking chaired by Sir John Vickers, which the Government accepted and legislated for in the Financial Services (Banking Reform) Act 2013. It will support financial stability by insulating retail ring-fenced banks’ core services whose continuous provision is essential to the economy—that is, retail and small business deposits and payments services—from shocks originating elsewhere in the global financial system. It means that banks which provide those essential services become simpler and more resolvable so that core services can keep running even if a ring-fenced bank or its group fails. In doing so, ring-fencing reduces the perceived subsidy that comes from the presumption that the Government will bail out failing banks. Details of the regime are set out in secondary legislation passed in 2014 and it is some of those details that this order amends.

There are 18 different amendments in the order which achieve three purposes. First, to address issues in the secondary legislation that could inhibit the successful implementation of the regime; secondly, to ensure that ring-fenced banks are able to continue

[LORD YOUNG OF COOKHAM]

recognisable retail banking activities; and thirdly, to close holes that we have discovered in the ring-fence. Together with the PRA, we will constantly patrol the ring-fence for any flaws in the regime and will step in to close them when they are identified.

To assist the Committee, as I note each of the amendments, I will identify the part of the order where each can be found. Unfortunately, as the order is laid out in line with the elements of the existing secondary legislation it is amending rather than thematic, and as some amendments require changes to more than one part of the legislation, my description may involve some skipping around. I am of course happy to provide a more detailed explanation of any aspect of this order.

The first category of amendments tackles issues in the regulations that could work against the successful implementation of the regime. Article 2 of the order, after necessary changes to some definitions, withdraws the requirement for banks' larger customers to complete a burdensome qualifying declaration and removes the requirement for banks to issue information to customers who are unaffected by the regime. Article 3(3) on page 4 also falls into this category by allowing in certain circumstances the securitisation of assets acquired in a resolution scenario and providing for the treatment of assets held by the banking group before ring-fencing comes into effect. Sticking with the theme of addressing issues that could threaten implementation, the elements of Article 3(6) found at the top of page 7 make it much easier for the PRA to assess compliance with the rules relating to the selling of simple derivatives, while Article 3(7) ensures consistency with the pensions regulations. Finally in this category, Article 3(10), right at the end of the order, addresses what happens when an organisation unexpectedly becomes a relevant financial institution while a ring-fenced bank is exposed to it.

The second set of amendments addresses issues with the regulations that might prevent ring-fenced banks carrying out activities we would certainly expect a retail bank to conduct. Amendments found in Article 3(4) on page 5 ensure that ring-fenced banks can continue being members of payment systems and central counterparties, and that they can hedge risks within the ring-fence. Articles 3(7) and 3(8) on page 7 ensure that ring-fenced banks can manage their liquidity risk. Similarly, amendments found in Articles 3(9) and 3(10) on page 8 ensure that ring-fenced banks can continue lending working capital to small businesses, acting as trustees, providing consultative services, and providing loans to infrastructure projects. The final set of amendments closes holes we have discovered in the ring-fence. Article 3(2) on page 4 expands the list of globally systemic insurers to which ring-fenced banks may not be exposed. Article 3(6) on page 6 tightens the risk calculation that constrains ring-fenced banks' issuance of simple derivatives.

There are some things these amendments do not do. They do not alter the location of the ring-fence: core activities must be ring-fenced and investment banking activity must be outside the fence. They do not alter the height of the ring-fence: the same degree of operational and financial independence must be

observed between the ring-fenced bank and the rest of its group, and they do not alter the timetable for ring-fencing banks. Banks in scope must be ring-fenced 27 months from now and, together with the PRA and the FCA, we are monitoring their progress closely. I beg to move.

4.30 pm

Lord Tunncliffe (Lab): My Lords, I thank the Minister for introducing the final statutory instrument of the day. The order makes a number of changes to the ring-fence regime which is due to come into force on 1 January 2019. As a result of the structural changes that the banks have begun to implement in advance of the regime, the Treasury has suggested that a number of technical issues have become apparent which if not rectified could undermine its effectiveness.

I want to say at the outset that the Opposition have no intention of opposing any of the measures proposed in this statutory instrument and any moves to fix errors prior to the commencement of the regime are welcome. However, there are a number of questions that I want to put to the Minister in order to clarify the intent and purpose of some of the changes outlined in the order. Before turning to the specifics, I want to address a broader issue which I hope sincerely the Minister will take back to those of his colleagues in the Treasury who prepare explanatory material for future statutory instruments. At the most basic level, the order relates to the forthcoming introduction of the ring-fencing regime, but the underlying objective of the instrument and of the Financial Services (Banking Reform) Act 2013 which it amends is to ensure the reduction of risk from the banking sector.

The Minister referred to 18 amendments—there are in fact more when you take into account the multiple changes being made on some points. They are being introduced because at present there are shortfalls in the ring-fencing regime standards. They are minor alterations, but as I understand it the regime would have a severe impact on the operation of the sector if left unamended, so these changes are quite important. I presume that the decisions have been made as a result of detailed examination and consultation, and I would ask the Minister why such information has not been provided with the order. The noble Lord is an experienced parliamentarian and will know that by convention we will not oppose these measures. It is therefore vital that we have a full assurance that the changes do not increase risk and are necessary not only for the banking sector but for the public good. As Her Majesty's Opposition, we cannot provide the necessary scrutiny if Explanatory Memorandums are as scarce in detail as the one in question today.

The Minister's speech has illustrated beautifully why I never read such orders. They are, frankly, impossible to read, especially when they amend other orders; it is bad enough when they just amend a Bill. We in the Opposition are totally dependent on the clarity of Explanatory Memorandums in order to apply scrutiny, but I must say that the memorandum for this order hits something of a new low. During the development of this legislation, which I have lived with all the way through—largely because I did not duck at times—we

have had very good support from the Treasury. It produced excellent briefing notes to go with the original Act and the various amendments to it, and its helpfulness continues to this day—I think that it was Tom Etheridge whom I spoke to yesterday morning. Although Treasury officials have helped me go through the memorandum, it is unfortunate that it should be so difficult to understand. In terms of confusion my favourite is paragraph 7.22. I shall not read it out because I am sure that the Minister has it in front with him or has read it with the same energy as I have. I could not understand it because it does two quite different things in the same paragraph, and indeed in the same sentence.

I failed my 11-plus and attended a secondary technical school, but I remember my English teacher telling me not to put more than one idea in a sentence, and ideally not more than one idea in a paragraph. Perhaps if I had gone to a grammar school I would have a more nuanced approach whereby you mix them all up like a soup. To illustrate the limitations of paragraph 7.22, if you delete in the second line,

“and strengthen the UK’s resolution toolkit”,

and then in the fourth line delete,

“acquired in a resolution scenario”,

and reread it, the paragraph makes sense. It states:

“RFBs are currently prohibited from securitising assets that they haven’t created themselves”.

That is simply not true because there are no RFBs. What it really means is that the order as presently drafted makes that prohibition. As I have amended the paragraph, it goes on to say:

“To aid transition to the ring-fencing regime ... this Order amends the EAPO to allow an RFB to securitise assets ... transferred in a ring-fencing transfer scheme”.

A ring-fenced transfer scheme is a scheme which is proposed by a bank for how it will divide itself up and is approved by a court. That is an absolutely essential part of the process of creating the ring-fence so it is reasonable that that exception should be made. The paragraph goes on to say in lovely language,

“or acquired by itself or a member of the wider banking group at least two years before becoming an RFB. In all cases this is limited to assets that an RFB is permitted to hold”.

What that actually means is that any assets acquired after 1 January 2017 cannot come under this prohibition in order to create a two-year buffer before 1 January 2019 when the ring-fence comes into effect. Once again, that is a perfectly reasonable thing to do. As I have amended this paragraph, it is all about how to get into the ring-fence situation in order to modify the prohibition for that transition to take place. That is an important idea. I think that I understand it, but if I do not I am sure that the Minister will tell me so. If I have understood it correctly, it is a perfectly reasonable concept.

A second meaning arises if I delete in the second line of the paragraph,

“aid transition to the ring-fencing regime and”,

and then in the third line, I delete from “transferred” to the end of that sentence. It would then read:

“To ... strengthen the UK’s resolution toolkit, this Order amends the EAPO to allow an RFB to securitise assets acquired in a resolution scenario”.

This once again is a very powerful and crucial idea. I have been unfortunate enough to have studied the resolution regime as part of my duties in picking up this brief. It is an exciting process when a bank goes bust. My understanding is that there would probably be 60 hours in which to work over a weekend. It is crucial that the resolution authority is able, if it believes it to be the right course of action, to break up the bank and transfer the good bits to another ring-fenced body, and for that ring-fenced body to be able to take those assets as if they were its own. I think that is what this paragraph means given what I believe are two different senses.

If I have made a mistake, perhaps the Minister will write a letter. I am sympathetic to that. But the point I am making is that this paragraph and many other paragraphs in the document could have been written at greater length for bears of little brain like myself so that we could tread through this order. It is very big and I think it contains 20-odd changes that are crucial to the regime. One important duty of the Opposition is for at least one person in it to understand the order in totality and to have tested it to see whether it makes sense and is consistent.

As I have said, this is a wider issue than just the order in front of us. I hope that the Minister will convey the concerns I have raised so that all sides of the House can engage in more informed and fruitful discussions. Once again, I thank the Treasury, which was happy to take the time to take me through the order.

On two specific points, the first concerns the removal of the “qualifying declaration” which large corporate customers are required to submit before the bank can move their account to the non-ring-fenced body, and its replacement with a requirement on the bank to reach a determination as to whether a customer is eligible to be moved to the non-ring-fenced body. From my reading of the instrument—I encourage the Minister to correct me if I am wrong—this is the only alteration that constitutes an actual policy shift as opposed to a technical amendment. I would be grateful if the Minister could go into more detail about why this decision was made and the implications that this will have on both the companies and the banking sector. I am happy for the Minister to write to me on this, but I tried quite hard to understand the paragraph in the draft Explanatory Memorandum that covered this point. While I think I understood it in part, I do not understand it fully.

The second point, which relates to the removal of the qualifying declaration, concerns the impact assessment or the lack thereof. Paragraph 10.2 of the Explanatory Memorandum states that,

“these amendments respond to technical issues”,

and that therefore there will be,

“no new impact on business, charities or voluntary bodies”.

Yet only two paragraphs later the memorandum reveals that:

“The Treasury is preparing a validation impact assessment in relation to the removal of the qualifying declaration process”.

Surely it would have been wise to produce an assessment before the policy was introduced, or at least before the order was laid. The Government have until January 2019

[LORD TUNNICLIFFE]

to get this right, so why is it being rushed through and the correct assessment procedure not being followed? Can the Minister say when the validation impact assessment will be published? Such a document might also provide more understanding of the motivation of that part of the order.

I spent about 10 hours trying to understand the order and at points one has to stand back and say, “Why bother?”. We had a lovely illustration today of the other end of the spectrum, where my noble friend Lord McAvoy was able to say, “Fine—get on with it”. He put it in proper lordly terms, but frankly he did not say any more than that. That was a class of statutory instrument I would describe as trivial—I do not mean that in a rude sense but in a technical sense. In mathematics, when you have a line sometimes you put “trivial” at the end, which means that the reason for it is self-evident; the reason for that order was self-evident, and fair enough. There are some totally political orders which we do not vote against because of our convention, but we want to stand up, make big speeches and get on the record that we do not like what something is doing, which is important. Some orders are a mixture of technical and political, but some, which I hope this order is, are wholly technical. What, then, is the role of the Opposition? It seems to be to make sure that the drafting of the order and the thinking behind it have full depth—that it fits together and goes with the grain of the order. For that, we need fully to understand it.

There are two ways through this dilemma. One is for the Treasury to write better Explanatory Memorandums; we know it can because of some of the excellent stuff it produced in generating the legislation. The other is probably for us in particular to become aware of orders rather earlier; I have put action in hand for that. When we have conversations with the Minister and officials about something of this depth and length, we can use a more informal process to slog through the detail and make sure that we understand it.

As far as I am able to understand the order, I thoroughly approve of it. I have been through the changes, which all seem necessary and reasonable. I have a slight problem with the definition in relation to notification of a big company compared with a little company, but, that aside, we are content with the general policy, which we have supported through its many stages. This seems to be a sensible set of corrections. If the Government have another swathe of amendments to bring to us—many would be critical of that, but I know that they would be reacting to responses from industry and their own work—I would want on that occasion to try to understand more before we reached this stage, so that we could perhaps make this stage a mere formality.

4.45 pm

Lord Young of Cookham: My Lords, I have taken many statutory instruments through another place, but this is the first SI that I have taken through your Lordships’ House. I am enormously impressed by the detailed consideration which the noble Lord has given to it; it will certainly put me on my guard for any future SIs that I may take through. I am grateful to

him for the Opposition’s support for the order before us. The noble Lord has a background in this subject, having been closely involved with the primary legislation.

Let me try to deal with some of the issues that the noble Lord raised. On consultation, the amendments were the subject of a short, technical review—because they are mainly technical changes—with the affected banking groups and their representative body, the British Bankers’ Association. Such a review was proportionate for the amendments, given their technical nature. They have also been drafted in consultation with the PRA and the Financial Conduct Authority.

The noble Lord asked about the impact of the order on risk. Some amendments ensure that ring-fenced banks are able to deliver economic services, as it was always the intention that they should. Some of the activities help ring-fenced banks manage their risk; for example, ensuring they can hedge risks within the sub-group. Other activities permitted by the amendments and the ring-fencing legislation more broadly carry risk, but with this order we are not shifting the ring-fence to include any new types of business but only ensuring that ring-fenced banks are able to deliver the service that they are meant to.

I take the noble Lord’s point on the Explanatory Memorandum. He wants an Explanatory Memorandum for the Explanatory Memorandum, because he found it difficult to follow. I will take that point on board and see whether in future we can do better and make sure that an Explanatory Memorandum lives up to its name.

On securitisation, the bit of the Explanatory Memorandum that the noble Lord focused on, his understanding is correct. Ring-fenced banks are allowed to securitise the assets that they created—this was a recommendation of the Independent Commission on Banking. Ring-fenced banks normally may not securitise assets originating outside the ring-fence. The order makes two changes: first, to what assets ring-fenced banks may securitise after 2019; secondly, to provide for what happens to assets already on their books before ring-fencing comes into existence.

The first change provides an exception to the prohibition on securitising acquired assets for assets obtained following the resolution of a failed firm. Successful resolution is important to ensure that failing firms do not harm the economy or taxpayers. This amendment maximises the resolution options available to the regulators by increasing the chance of finding a suitable private sector purchaser for the failed bank’s assets.

The second change introduces provisions to deal with banks’ existing assets. The current regulations fail to provide for the treatment of both assets created by the banking group before the ring-fence is established and assets acquired by the banking group in the past. The order makes it clear that when ring-fenced banks are created, they may securitise the assets already held by the banking group and those transferred through the ring-fenced transfer scheme. However, to stop banking groups spending the next two years acquiring assets for the ring-fenced banks to securitise, ring-fenced banks will be able to securitise assets held by the banking group only if they were acquired more than

two years before the ring-fenced bank was established; for most banks this means 1 January 2017, which will be shortly after this order comes into force.

On the changes to the qualifying declaration, this should simplify matters for businesses. Completing qualifying declarations is likely to require banks' customers to devote senior staff time to completing the declaration and may require engagement of legal advice, accountants and auditors to sign off the evidence the business provides. This cost to non-bank businesses will be considerably higher than to banks completing due diligence. With the changes, non-bank businesses will not have to undertake the regime that was set out initially. We believe that around 34,000 medium and large businesses will benefit from this change.

On the impact this will have, these amendments are, as I said, mainly technical changes to the ring-fencing regulation. The amendment with the most significant impact is the one I just referred to: the removal of the qualifying declaration process. This will remove a

burden on banks and their medium and large business clients during the transition. The Regulatory Policy Committee rules say that the deregulatory nature of this change means that we do not need to prepare a regulatory impact assessment. But we do need to prepare, on a longer timescale, a "validation" impact assessment so the RPC can confirm the deregulatory effect of removing the qualifying declaration process. We do not normally publish these validation impact assessments but in this case I will be happy to, once it has been validated.

Finally, the noble Lord suggested a process of interaction between Opposition Members or other noble Lords and the Treasury to get a better understanding of the regulations that are brought forward. I will take that helpful suggestion away and see how the Government can best respond to it.

Motion agreed.

Committee adjourned at 4.52 pm.

