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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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# House of Lords

*Tuesday 8 November 2016*

*2.30 pm*

*Prayers—read by the Lord Bishop of Salisbury.*

## Prisons: Violence

*Question*

*2.36 pm*

*Asked by* ***Lord Patel of Bradford***

To ask Her Majesty's Government what action they are taking to address reports of increasing levels of violence in prisons.

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, improving safety and decreasing the level of violence is an urgent priority for this Government. We recently set out our plans for prison safety and reform in a White Paper. We will invest in 2,500 more prison officers across the prison estate. This includes the recruitment by March 2017 of 400 additional prison officers into 10 of our most challenging prisons.

**Lord Patel of Bradford (Lab):** The Minister is well aware of the many issues that have contributed to the recent rise in the level of violence in the prison system, including huge disinvestment during the past five years, major staff shortages, overcrowding and lack of access to good mental health care. I shall focus my question on just one area: the misuse of drugs. The Government's recent White Paper acknowledges that the increased use of psychoactive substances in prisons is without doubt a major contributory factor to the rise in violence. The Government's response is to tackle the supply of drugs and improve mandatory drug testing. It is a laudable aim, but does the Minister agree that drug testing can contribute to reducing drug misuse only when it is used as part of a comprehensive drug strategy that also addresses demand?

The White Paper states that the Government will reassess their approach to tackling supply and demand. However, with the cost of mandatory drug testing and current staffing issues, what assurances can the Minister give that a comprehensive drug strategy that tackles both supply and demand, and includes class A drugs, psychoactive substances and prescription drugs, will be developed and appropriately funded, and on what timescale?

**Lord Keen of Elie:** I am obliged to the noble Lord. Clearly, our concern is not only to reduce the availability and supply of drugs in prisons but to address the demand for them, which is a very complex problem. The noble Lord referred in particular to psychoactive substances. They pose a problem of their own, which is the ability to test for such substances effectively. Great progress has been made in that regard and we now have an effective means of testing for the common psychoactive substances that we find being abused in our prisons.

**Lord Singh of Wimbledon (CB):** My Lords, I speak as head of the Sikh prison chaplaincy service. Overcrowding is a major contributory factor to violence in prisons, and a major cause of overcrowding is repeat offending. Sikh chaplains are instructed to work with local communities to break the cycle of reoffending by providing work and accommodation for released prisoners. Does the Minister agree that the National Offender Management Service and the chaplaincy council should encourage chaplains of all faiths to make rehabilitation central to their work? Does he further agree that an element of competition between different faiths to reduce reoffending would be no bad thing?

**Lord Keen of Elie:** I certainly concur with the noble Lord's observation about the need for rehabilitation. That is why the Government are addressing through-the-gate support for those who leave our prisons. On competition between various faiths, I would leave that to others.

**The Lord Bishop of Salisbury:** My Lords, I have been in and out of prisons quite a lot, usually in support of the excellent multifaith chaplaincies that attest to the importance of the spirit of human beings. In recent years, there has been an alarming rise in the number of suicides, and in self-harm and violence. The recently published strategy for prison safety and reform is very welcome. Does the Minister agree that an imaginative and creative approach to education and the development of people's spirit is an essential part of prison life for all those who have offended and are being punished?

**Lord Keen of Elie:** I entirely concur with the observations of the right reverend Prelate. Self-harm and suicide are disturbing and persistent problems, which we seek to address. We are already taking steps to provide prisoners at risk of suicide or self-harm with mental health support. The NOMS suicide and self-harm reduction project includes collaborative work with NHS England and Public Health England.

**Baroness Berridge (Con):** My Lords, as with hospitals, schools and businesses, leadership in our prisons is vital. While the average length of tenure for a prison governor is three and a half years, could my noble and learned friend outline what percentage of prison governors move on after less than two years? Do the Government have any strategy to ensure that governors stay in post for a length of time that enables there to be stability at the top?

**Lord Keen of Elie:** On strategy, the Government have already indicated in the White Paper their determination to devolve greater responsibility to individual governors for their particular establishments. I do not have the figures for tenure of governors, however, and I undertake to write to my noble friend about that.

**Baroness Corston (Lab):** My Lords, will the Minister accept that under the coalition there were 30% staffing cuts in the Prison Service? We lost 7,000 full-time posts. The Government now propose to recruit 2,500 apparently to cover that gap, mindful of the fact that the salary for somebody in the London area is less that £21,000.

[Baroness Corston]
Will he acknowledge that it will be impossible for those 2,500 extra people to make good the numbers so as to stop self-harm, suicide and disorder?

**Lord Keen of Elie:** We must always aim to stop self-harm, suicide and disorder in our prisons. The number of prison officers has reduced since 2010 due to the closure of some old prisons which gave poor value for money, delivering the savings under the 2010 spending review and bringing staff numbers into line with benchmark standards. Of course, we have now reviewed those benchmark standards, which is why we are determined to introduce an additional 2,500 staff. Furthermore, we are addressing the issue of recruitment and retention of staff.

**Lord Lee of Trafford (LD):** My Lords, our prisons are a national embarrassment and a disgrace. Many former Ministers should hang their heads in shame. Timpson, the retail chain, is an exemplar in employing ex-offenders: 10% of its 4,500 employees are ex-offenders and it runs seven prison training academies. What are the Government doing to encourage more employers to adopt Timpson's commendable positive approach?

**Lord Keen of Elie:** We are making very real efforts to ensure that not only the employer mentioned but many others engage in providing work within our prisons. This programme is extending all the time. There are demands and limitations because of the geography and nature of our prison establishment but we are investing £1.3 billion in the prison estate to make work opportunities more available.

**Baroness Masham of Ilton (CB):** My Lords, does the Minister think that all prison staff are adequately trained to deal with very difficult prisoners? Does he also think that gangs should be dispersed to different prisons when they are in the same prison?

**Lord Keen of Elie:** On staff training, again, that is addressed in the White Paper. We are introducing an apprenticeship scheme to accelerate training for staff. We are also looking at the recruitment of staff from the armed services, with a background that will enable them to integrate more easily into the work and demands of the Prison Service.

## Flooding: Defences

*Question*

*2.45 pm*

*Asked by* ***Baroness Jones of Whitchurch***

To ask Her Majesty's Government whether flood defences are in place to protect vital infrastructure this winter.

**The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con):** My Lords, we have been working with essential service industries and communities to ensure that energy, telecoms and water are better protected. Industry is making a large investment to secure that protection through a mix of temporary and permanent defences. More key investments have been made to protect transport and medical facilities. The Environment Agency has purchased a further 20 miles of temporary flood defences, in addition to more than 60 new high-volume pumps and other equipment.

**Baroness Jones of Whitchurch (Lab):** I thank the Minister for that reply, but is it not the case that most of the additional money being provided is for temporary defences which will help only a small number of sites under threat; that the recent *National Flood Resilience Review* identified 530 key infrastructure sites across England which will still be vulnerable to flooding; that there is an urgent need to fund more geographically specific water-catchment initiatives, a model which we know works; and that according to the Commons EFRA Committee, the Government's plans so far are "fragmented, inefficient and ineffective"? In the light of all of that, what reassurance can the Minister give that there will not be a repeat of the devastation and the heartbreak that affected so many communities last winter?

**Lord Gardiner of Kimble:** My Lords, I would start where the noble Baroness finished—I thoroughly endorse what she said about the great sadnesses and difficulties of many communities after the floods last year. That is why we are investing £2.5 billion over six years in improving flood defences and spending more than £1 billion on maintaining defences over the course of this Parliament, much more than in the last Parliament. Of course, we all need to work on this. That is why I sent a letter to your Lordships about what is actually happening through the Environment Agency. So far as the EFRA report is concerned, we are in fact implementing many recommendations already, and managing watercourses on an entire-catchment-area basis.

**Lord Elton (Con):** My Lords, the limitation of damage depends very much on an early and quick response to risk. Can my noble friend tell us what has been done to make sure that the emergency equipment that he has referred to is available in relatively local terms, rather than having to be shipped across four or five counties?

**Lord Gardiner of Kimble:** My Lords, that is why, for instance, more than 100 specialist flood rescue teams and associated equipment are on standby across the country, as part of the National Asset Register. It is absolutely clear that early warning is important so that the preparedness that I spoke about in my letter is adhered to. We are certainly working to ensure that as many communities as possible are well aware of flood risk.

**Baroness Parminter (LD):** My Lords, storing water on flood-lands and tree planting are cost-effective means of alleviating flood risk. Given our exit from the common agricultural policy, do the Government agree that in future our farmers should be paid for providing public goods, including managing land to alleviate communities' risks of flooding?

**Lord Gardiner of Kimble:** My Lords, I am not in a position today to say what our domestic arrangements will be after we have left the EU. However, as I think we all know, "slowing the flow"—Pickering is a good

example, as is the Defra-funded demonstration projects at Holnicote in Somerset and Upper Derwent in the Peak District—clearly demonstrates that natural flood-management measures are very important in reducing flood flow and height downstream. So, I think this is a very interesting proposal.

**Lord Hunt of Chesterton (Lab):** My Lords, can the Minister explain why government agencies have not been providing real-time warnings to individual houses and communities about flood levels, as happens in the Philippines' NOAH system, where special hand-held communication devices are widely distributed so that people receive and send flood messages to control centres, leading to more accurate flood warnings for emergency services?

**Lord Gardiner of Kimble:** My Lords, that is precisely why—as set out in the letter I wrote and the Environment Agency paper *Winter Ready 2016*—the Environment Agency is extending flooding-warning service to more communities and improving the range of digital services on GOV.UK, to help people take action to minimise the impact. I very much hope the noble Lord will think of going to the meeting on 29 November, when the Environment Agency and other departments will be in Parliament so that all these matters can be discussed in more detail.

**The Earl of Kinnoull (CB):** My Lords, will the Minister provide the House with an update as to whether Flood Re, the insurance solution which can provide affordable insurance for homes, is a success in its first year of operation, and what plans the Government might have to extend Flood Re to small businesses?

**Lord Gardiner of Kimble:** My Lords, the first thing to say is that 53,000 home insurance policies are now backed by Flood Re. In fact, 40 insurers representing 90% of the market are now participating in Flood Re. I am very pleased that the insurance industry has responded so enthusiastically. We want to see how that works first. It seems to be extremely successful. It has meant that policyholders have reasonable premiums. We will certainly look at any future issues.

**The Lord Bishop of St Albans:** The Minister has already referred to the EFRA Select Committee report, *Future Flood Prevention.* One of its recommendations is the imposition on developers of a statutory liability for the cost of floods where those developments have not complied with planning regulations or the local planning situation, thereby causing additional flooding. Does the Minister agree with this eminently sensible suggestion, and will Her Majesty's Government adopt it?

**Lord Gardiner of Kimble:** My Lords, what the right reverend Prelate said is interesting and important. With the need for more housing and development, we must ensure that flood protection is very much considered. I will need to reflect on some of the detail of what the right reverend Prelate said. In terms of planning, although London and Hull are all parts of flood plains, we need to ensure that we do not develop where there is a danger of floods and we must have defences.

## Magistrates: Sentencing Powers

*Question*

*2.52 pm*

*Asked by* ***Baroness Seccombe***

To ask Her Majesty's Government, further to the answer by Lord Faulks on 7 July (HL Deb, cols 2120–2), whether consideration of increasing magistrates' sentencing powers has concluded; and if so, what conclusions have been reached.

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, we are committed to keeping the magistracy at the centre of our justice system as we transform our courts and tribunals. We are still considering the case for increasing magistrates' courts' sentencing powers as one way to achieve this.

**Baroness Seccombe (Con):** My Lords, it is four months since I asked my Question about the sentencing powers of magistrates. At that time, I was encouraged by the Answer from my noble friend Lord Faulks. Does my noble and learned friend feel that the time is coming when we should think more about this? I was very heartened by the Justice Select Committee's recommendation that such an increase should occur. The Magistrates' Association would welcome this move. It would like more cases to be resolved locally and more speedily, at the same time saving millions of pounds, which at this time would be very helpful. As a magistrate of long standing, I know that all cases are dealt with sentencing anyone to prison for a short time. Magistrates today are highly trained. Does my noble and learned friend feel that the time has come to accept the Select Committee's recommendation?

**Lord Keen of Elie:** I am obliged to my noble friend. We recognise that magistrates deal with more than 90% of criminal cases in the justice system. The proposed increase in sentencing powers was introduced by the Labour Government in 2003. They contemplated it for about seven years. We have not quite caught up with them yet, but we have had the recent report from the Justice Select Committee and we will consider its recommendations carefully. One of those recommendations noted that the Sentencing Council's new allocation guidelines, which came in in March 2016, should be given an opportunity to bed in before the matter is finally reviewed, and we will do that.

**Lord Beecham (Lab):** The former Minister Shailesh Vara, before being sentenced to life on the Back Benches, told the Justice Select Committee that the Government were considering piloting increased sentencing powers in some areas. Can the Minister confirm the Government are not going to adopt this proposal, given the inevitable sense of injustice which would follow from the imposition by different courts of substantially different sentences for similar offences? Would he also comment on the wisdom of the Magistrates' Association receiving funding from Sodexo, MTCnovo and Working Links, which are all engaged in the Prison Service or running community rehabilitation companies, to generate income for the association's education and research network, as was revealed in *Private Eye* last December?

**Lord Keen of Elie:** I am not in a position to comment on "revelations" in *Private Eye* and do not intend to do so. So far as the modelling of any increase in sentencing powers is concerned, that is presently under review, and we will come to a decision on it in due course.

**Lord Thomas of Gresford (LD):** The noble and learned Lord talked in his first Answer this afternoon about the importance of rehabilitation. Short sentences are, without doubt, hopeless for that purpose. Should not the emphasis be on developing better and more intensive non-custodial sentences and on training magistrates, including the Magistrates' Association, in the value of such sentences?

**Lord Keen of Elie:** Clearly, magistrates have the training and skill to consider a wide variety of sentencing powers and to impose a wide variety of sentences. We have no hesitation in acknowledging that. Whether they should or should not be custodial sentences, at the end of the day, must be a matter of judgment in each individual case.

**Lord Faulks (Con):** My Lords, last week saw a disgraceful attack on the judiciary.

**Noble Lords:** Hear, hear.

**Lord Faulks:** Will my noble and learned friend take this opportunity to show the Government's support for the entire cohort of the judiciary, whether it be the Supreme Court, the Divisional Court or the magistracy? Can he also confirm that, were magistrates to be given additional powers, it is overwhelmingly likely that those sentencing powers would be subject to a right of appeal, as of right, to the Crown Court?

**Lord Keen of Elie:** My Lords, we have a judiciary of the highest calibre. We have a free press, which is not always of the highest calibre. Sensationalist and ill-informed attacks can undermine public confidence in the judiciary, but our public can have every confidence in our judiciary, a confidence which I believe must be shared by the Executive.

**Baroness McIntosh of Hudnall (Lab):** My Lords, would the Minister return to the second question asked by his noble friend Lord Faulks, which I believe he did not answer?

**Lord Keen of Elie:** I apologise for having overlooked the second part of the question, having been distracted by the first part. I acknowledge that the second part of the question is in point. The question of an automatic right of appeal if sentencing powers are increased clearly has to be an important consideration.

**Baroness Farrington of Ribbleton (Lab):** My Lords, would the Minister care to agree with me that the answer to the problem of the ratio of prison staff to prisons is related not only to the number of prisons but to the number of prisoners? Therefore, there ought to be a return to at least the original number of prison staff. It is ridiculous to expect prison staff to cope with large numbers of people in a smaller number of prisons without government help.

**Lord Keen of Elie:** Although I would always be anxious to concur with the noble Baroness where I can, I would point out that prison numbers have been determined more recently by reference to benchmarking, which has been the subject of review to reflect the nature and condition of the prison estate.

**Lord Laming (CB):** My Lords, the question of non-custodial sentences is very timely. Does the Minister agree that to achieve that objective, there would have to be considerable investment in the probation service? I hope that when these matters are being considered, the probation service will be central to the Government's thinking.

**Lord Keen of Elie:** I am obliged to the noble Lord. The Government are conscious that prison alone is not the answer to anything, that rehabilitation is critical and that the probation service remains central to that progress being made.

## Work Capability Assessments

*Question*

*3 pm*

*Asked by* ***Baroness Rawlings***

To ask Her Majesty's Government how they intend to consult British businesses on the proposals for work capability assessments contained in the work, health and disability Green Paper, *Improving Lives*.

**The Minister of State, Department for Work and Pensions (Lord Freud) (Con):** We are developing our consultation plan to ensure that we engage properly with British business on the proposals for reform, given the key role that it has to play in improving health and work outcomes. We are working with local enterprise partnership networks to reach a range of employers and employer organisations. A particular focus will be on listening to small and medium-sized employers to understand the support they need to better promote the health of their employees.

**Baroness Rawlings (Con):** My Lords, I thank the Minister for his reply. Last Monday we had two Statements following each other, one on capability assessment and the other on Nissan. The Minister said,

"We need to harness that positive power of business to promote disability awareness".—[*Official Report*, 31/10/16; col. 482.]

The Green Paper asks, "How can we encourage employers to recruit disabled people?". As we know, Nissan is a hugely important employer, employing 35,000 people. Was capability assessment one of the topics on the agenda of the Nissan talks and, if not, do the Government intend to raise it in future?

**Lord Freud:** We relaunched Disability Confident last week and have had a very strong early response to it, with 2,500 employers signing up. Nissan is clearly a major employer in the north-east, and is making a significant investment that represents 7,000 jobs directly and many more in the supply chain. We will be talking to Nissan at the appropriate time on Disability Confident but it was not one of the topics that was discussed between the company and the Business Secretary.

**Baroness Thomas of Winchester (LD):** In the very welcome Green Paper, the number of extra staff who will be needed to carry through its laudable aims is striking. How will the Minister's department ensure that there are enough trained work coaches, disability employment advisers, occupational health and Jobcentre Plus work psychologists and others to roll out this programme?

**Lord Freud:** We do not yet have a formalised programme. We are in the middle of a consultation, as the noble Baroness knows. We will take the results of the consultation very seriously, come to the appropriate conclusions and develop the policies and the means of implementation.

**Lord McKenzie of Luton (Lab):** My Lords, is any part of the consultation to consider the appropriateness of maintaining cuts to the employment and support allowance, which, as the Minister will know, is denying some £30 a week to thousands of the most vulnerable households in the country?

**Lord Freud:** We announced earlier this year that there would be no more welfare savings but we would go through with those that had already been announced. The job of the Government is to implement what has been announced, but there will be no more. This Green Paper looks at how we can have a better system of managing health issues with getting people into work. We have got half a million more disabled people into work in the last three years, and we need to keep that trajectory going.

**Lord Wigley (PC):** My Lords—

**Lord Brookman (Lab):** My Lords, many of us do not speak very often, so maybe I could get in for once. I heard the noble Lord speak yesterday, several times. Nissan has been mentioned. I am interested in the Government's view on directing steel manufacturers in the UK to produce steel for the Nissan cars in Sunderland. Is that discussion taking place?

**Lord Freud:** It is a delight to hear from the noble Lord. We do not have a managed economy of the kind that he may be suggesting. We had talks with Nissan with a very good outcome: Nissan took the decision to go on investing. Clearly, a lot of discussion is going on with the steel industry in this country, given that until recently, steel in the western world was under severe pressure.

**The Countess of Mar (CB):** My Lords, does the Minister agree that if the scheme is to be a success, work capability assessments must accurately reflect people's ability to work? In many cases of people I deal with who have fluctuating conditions, assessments do not reflect the ability to work. What are the Minister and the Government doing to improve the situation?

**Lord Freud:** We inherited the work capability assessment, and we have now put it through five independent reviews and developed it considerably. The point at issue in the Green Paper is whether we should combine the assessment of financial need with that of the support that the person needs. That is the main focus of the Green Paper.

**Lord Wigley:** My Lords, I declare my interest as vice-president of Mencap. Will the Minister confirm that the needs of those with learning difficulties will be given as much attention as those with health problems or other forms of disability?

**Lord Freud:** Yes. My colleague Penny Mordaunt and I had a conversation on this issue just yesterday. We have slightly more than 1 million people with learning difficulties, with a very low proportion in work—I think the figure is 6%. If we are to start closing the disability employment gap, we have to do something in this area.

## Pension Schemes Bill [HL]

*Order of Consideration Motion*

*3.07 pm*

*Moved by* ***Lord Freud***

That it be an instruction to the Committee of the Whole House to which the Pension Schemes Bill [HL] has been committed that they consider the bill in the following order:

Clauses 1 to 31, Schedule 1, Clauses 32 to 36, Schedule 2, Clause 37, Schedule 3, Clauses 38 to 44, Title.

*Motion agreed.*

## LGBT Community: UN Independent Expert

*Statement*

*3.07 pm*

**Baroness Goldie (Con):** My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer given by my right honourable friend Sir Alan Duncan, Minister of State, Foreign and Commonwealth Office, to an Urgent Question in the other place. The Statement is as follows:

"As this House will know, the issue before us concerns the Human Rights Council of the United Nations and its recent—very welcome—decision to create the post of independent expert on sexual orientation and gender identity, or what in House parlance we would call LGBT. The chosen person for that role was Mr Vitit Muntarbhorn from Thailand.

[Baroness Goldie]

The UK was successfully re-elected to the Human Rights Council only last month, but we are now having to campaign in New York, where a group of African delegations has challenged the mandate of the independent expert. I am therefore grateful to the honourable Lady for this opportunity to explain the steps we are taking, which I am certain will enjoy the support of the whole House. We obviously strongly oppose this attempt to reverse the mandate and to block the final approval of the process, something which should be straightforward.

Opponents of this important mandate misunderstand its nature, which is proportionate and properly established by the United Nations Human Rights Council. Since Friday night, when we discovered this was happening, the United Kingdom's diplomatic network has been making this point in all capitals across the globe. For instance, only this morning, my noble friend Lady Anelay of St Johns, who is visiting Sri Lanka, secured the agreement of her hosts in Colombo to join us by supporting an amendment proposed by a group of Latin American countries that were the main proponent of the appointment in the first place.

The Government and all in this House believe that the chance to live with dignity, free from violence or discrimination should not be based on a person's sexual orientation or gender identity. All people are born with equal rights and should enjoy the protection of the United Nations. Acts of violence against LGBT people take place in all regions of the world, including our own. We condemn such violence and discrimination and we strongly support this new independent expert in his work. We will resist any and all attempts to block his appointment and mandate".

My Lords, that concludes the Statement.

*3.10 pm*

**Lord Collins of Highbury (Lab):** My Lords, I thank the noble Baroness for repeating the Statement. The appointment of Mr Muntarbhorn reaffirms one of the fundamental principles of the United Nations: that everyone is equal in dignity and right. It also acknowledges, as the Minister said, that LGBT people across the world continue to suffer from discrimination and violence because of their sexual orientation or gender identity.

Does the Minister agree with me that the threat of suspending the UN independent expert by the African nations is an abuse of process, which could undermine all the work of the UN Human Rights Council? I also point out that, of the 23 votes in favour, all EU member states and accession states in the Human Rights Council supported the appointment. Botswana's UN ambassador, one of the abstentions in the vote in the Human Rights Council, said that African countries wanted to stress that sexual orientation and gender identity,

"are not and should not be linked to existing international human rights instruments".

What are the Government doing to ensure the continuation of the EU's principled position, and how does the Minister see the position of Botswana and other Commonwealth countries in the context of the Commonwealth charter?

**Baroness Goldie:** I thank the noble Lord for making three very important points. I shall deal, first, with the issue of process. This deployment of a mechanism to the General Assembly of the UN is technically competent, but—it is important to stress this—it would normally be reserved for emergency issues or unprecedented developments. It is not a mechanism for routinely unpicking properly promulgated decisions. The noble Lord raises a very important question in that if this is to become a practice, it becomes an aberrant use of process. There is a danger that that could impugn the integrity of the whole institution, which would be profoundly regrettable.

Secondly, on the issue of our EU partners, I suggest to the noble Lord that this is one issue which transcends borders and boundaries whether we are in the EU or when we ultimately leave the EU. The UK will continue to remain an open, diverse and tolerant society. Domestically we have a lot to be proud of. We continue to be recognised as one of the most progressive countries in Europe for LGBT rights. Indeed, we have one of the world's strongest legislative frameworks to prevent and tackle discrimination, and that will not change.

On the noble Lord's final point about the Human Rights Council and the vote that took place, it is fair to say that the United Kingdom regards that vote as duly promulgated. It adhered to proper process and was in every sense a competent and proper vote for that council to reach. It seems profoundly regrettable that that should be the subject of question at General Assembly level.

**Baroness Northover (LD):** My Lords, human rights clearly must be universal. What are the Government doing to combat the views expressed by Botswana's ambassador to the UN on behalf of other African countries that racism must be combated but that they should not combat discrimination based on sexuality? In the coalition we developed a framework for taking forward LGBT rights globally. What has happened to this?

**Baroness Goldie:** I thank the noble Baroness for a very pertinent question. The UK is playing an active role on this agenda globally. We are proud to be a member of the new Equal Rights Coalition, which is made up of 30 member states and aims to share best practice. This year the Foreign and Commonwealth Office Magna Carta funding provided approximately £900,000 to support LGBT rights and projects globally. From my earlier remarks, I hope that I can reassure the noble Baroness that this is a matter of fundamental importance to the United Kingdom Government, and we shall do everything we can to prosecute the case for proper respect for and observance of rights.

**Lord Hayward (Con):** I welcome my noble friend's comments in relation to the Government's reaction and their efforts to communicate, particularly with African countries. I return to the question asked from the Front Bench opposite regarding the influence that we as a country can apply on the Commonwealth countries in Africa. Are we working with France, the other country that might have the most influence on the African countries concerned?

**Baroness Goldie:** The Commonwealth is an important part of our international framework of relationships. My noble friend may be aware that there is a Commonwealth Heads of Government Meeting scheduled for 2018. An agreement of the agenda and any theme will take place closer to the event, but in the run-up to that meeting we will engage with other Commonwealth Governments and civil society organisations to help us to understand their priorities for the Commonwealth and inform our planning.

My noble friend will understand that within the Commonwealth framework there are particular challenges faced by LGBT people, who face significant discrimination across the Commonwealth, but the United Kingdom Government are resolute in their desire—as I said to the noble Baroness from the Liberal Democrat Benches—to prosecute the case positively for having rights acknowledged, respected and implemented.

**The Lord Bishop of Salisbury:** My Lords, I very much welcome the strength of the Statement. The rights of LGBTI people is often a very hot and contested matter, particularly on grounds of faith. It is significant therefore that the most reverend Primate the Archbishop of Canterbury and most other primates in the Anglican communion have committed to the decriminalisation of homosexuality and to the support of the rights of all God's children. I wonder whether the Minister would see faith as a resource that might be useful in addressing some of the issues raised on this matter.

**Baroness Goldie:** The right reverend Prelate makes an extremely important point. Those of us who have a background of faith would always hope that that background should be used in a positive way to achieve positive objectives, which is a fundamental tenet of our beliefs. I thank him for his contribution and I hope that a contribution may be made by the communities of faith in broadening the understanding of the need to respect the rights that are so necessary, recognising the challenges faced by the LGBT community, and trying to ensure that they enjoy the same privileges, safety and respect that everyone else does.

**Lord Cashman (Lab):** My Lords, I thank the Minister for repeating the Statement. I say that not only as a gay man, but as a founder of Stonewall and the Labour Party's LGBT global envoy. Sadly, when we push on these issues in the Caribbean, the Pacific and Africa, we are accused of neo-colonialism, so that is probably not the appropriate way to go about this. I request an answer from the Minister regarding whether the Government would consider appointing an LGBT global envoy on behalf of the Prime Minister to put this at the top of our political agenda and, at the same time, with the Church of England and others, lead on the decriminalisation of homosexuality in the 76 countries which currently criminalise the LGBTI communities.

**Baroness Goldie:** The noble Lord makes a number of very important points. I am unable to answer specifically in response to the questions which he raises. I hope he is reassured by what I have been saying on just how much the United Kingdom is not only in the van of both upholding these rights and seeking that other countries follow our example, but energetically pursuing an agenda to try and influence and persuade other countries to do likewise. However, his suggestions are not without interest. I hope that the General Assembly will not block the decision of the Human Rights Council to appoint the independent monitor and expert. The creation of that appointment sent out a signal across the world that I hope will be observed.

**Lord Scriven (LD):** My Lords, are the Government working with a coalition of other African countries which have decriminalised LGBT activity? In particular, what role are they taking in working with South Africa to try to defeat the resolution that is going through the UN?

**Baroness Goldie:** In repeating the Statement, I mentioned that the UK's diplomatic network has been making the point which we wish to have recognised in all capitals across the world, including countries in the African continent. Fortunately, the United Kingdom has an influential diplomatic network and we are using that as best we can to secure the objectives which the noble Lord clearly supports.

## Children and Social Work Bill [HL]

*Report (2nd Day)*

*3.20 pm*

*Relevant document: 3rd Report from the Joint Committee on Human Rights*

*Amendment 52*

*Moved by* ***Baroness Wheeler***

**52:** After Clause 28, insert the following new Clause—

"Whistleblowing arrangement in relation to looked after children and children at risk

The Secretary of State shall issue a code of practice on whistleblowing arrangements which can be taken into account by courts and tribunals when the issue of whistleblowing arises in public bodies providing social services and children's services, and local authorities, in relation to looked after children and children at risk."

**Baroness Wheeler (Lab):** My Lords, I will speak also to the rest of the amendments in this group on behalf of my noble friend Lord Wills, who is unfortunately unwell and not able to be here.

These amendments all aim to increase the protection for whistleblowers. These issues were discussed extensively at both Second Reading and in Committee, so I hope that we will not need to rehearse the arguments again today at length. On my noble friend's behalf I thank the Minister and his ministerial colleague in the House of Commons, Margot James MP, and their officials for the way in which they have engaged with the issues. They devoted a great deal of time and attention to the dialogue with my noble friend, and he has underlined that they have been fair and open-minded throughout. As a result, he commented that this has been a model of how public policy should be developed in legislation and that it does the Government credit.

[Baroness Wheeler]

The importance of whistleblowing in exposing malpractice and wrongdoing and improving the delivery of public services is widely accepted. Whistleblowers have some protections but they need more. These amendments seek to provide extra protection for those working in organisations covered by the Bill.

Amendments 52 and 72 require the Secretary of State to issue in relation to the organisations covered by the Bill a code of practice on whistleblowing arrangements which can be taken into account by courts and tribunals when the issue of whistleblowing arises. Such a statutory code of conduct sends out to all organisations a powerful signal about the importance that Parliament attaches to providing adequate protection for whistleblowers to help drive necessary cultural change within organisations to encourage whistleblowing. As such, it is a more powerful protection for whistleblowers and acts more effectively in promoting a culture of transparency than the voluntary code of conduct promoted by the Government.

Amendments 53 and 73 provide improved protections for whistleblowers who are job applicants in the organisations covered by the Bill. As we discussed in Committee, this is a critical gap in protections for whistleblowers as job applicants are not considered workers and so do not receive the protections afforded under the Public Interest Disclosure Act. If an individual is labelled a whistleblower, it can be difficult for them to get work because they can find themselves blacklisted—not through a formal, centralised database but informally. The excellent Public Concern at Work campaign has cited a number of such cases where an informal and insidious blacklisting of former whistleblowers has taken place in the recruitment and selection process.

The Government have recognised this anomaly and, following the Francis report into the Mid Staffordshire NHS trust, introduced new protections for whistleblowing job applicants, but only for those working in the NHS. There is no logical reason why such protections should be so restricted, and Amendment 53 addresses this anomaly for those working in organisations covered by the Bill.

As noble Lords will know, my noble friend Lord Wills has moved a similar amendment on several occasions in the past and it has been resisted by Ministers on the grounds that they require more evidence that it is needed—so this time, the amendment recognises those concerns by seeking to give the Secretary of State a power to introduce such protections. This is on the assumption that, if and when such evidence is produced, the Secretary of State will issue the appropriate regulations. There is no provision for what sort of evidence will be required to persuade the Secretary of State to act in this way, but all recent experience in the organisations covered by the Bill suggests that it will be forthcoming.

The amendment seeks to take advantage of a relatively rare legislative opportunity to ensure that, as soon as it becomes even clearer that these protections are needed, the Government can act rapidly to implement them. Amendment 53B seeks to achieve the same effect as Amendment 53, but restricts its scope to children's social care in an effort to meet any concerns about the scope of the Bill. I beg to move.

**Viscount Younger of Leckie (Con):** My Lords, I am extremely grateful to the noble Lords, Lord Wills and Lord Low, and the noble Baroness, Lady Wheeler, for these amendments. I well remember debating this matter during the passage of the Small Business, Enterprise and Employment Bill. I wish the noble Lord, Lord Wills, a speedy recovery and I am sorry that he is not with us today. He has worked assiduously to make positive changes which put more emphasis on employers to follow best practice and provide greater protection for employees.

I agree with the noble Lord, Lord Wills, and the noble Baroness, Lady Wheeler, that those working with the most vulnerable children in society need to be able to report concerns about what is happening in their organisation. Importantly, when they make a protected disclosure they should have no fear of being effectively blacklisted and unable to find a new role. Employment legislation is designed to protect workers from being unfairly dismissed by their employer, or from suffering other detriment such as missing out on promotion, if they report concerns that are in the public interest. That is why we have statutory employment protections for workers who report information which they reasonably believe reveals illegal activity or malpractice in an organisation. This may include someone at work neglecting their duties—for example, in a case where health and safety is put at risk.

I am aware that since we discussed these amendments in Committee, the noble Lord, Lord Wills, has had a productive discussion with the Minister for Small Business, Consumers and Corporate Responsibility. The noble Lord's Amendments 52, 53, 72 and 73, which he brought forward in Committee, make similar proposals for two groups of whistleblowers. Firstly, the noble Lord mentions those employed by, or seeking employment with, public bodies providing social services or children's services. Secondly, the noble Lord identifies those employed by, or seeking employment with, public bodies employing registered social workers. For each group, he proposes a statutory code of practice and the extension of whistleblower protections to job applicants.

We do think that it may be premature to consider a statutory code. In March last year, the coalition Government published guidance and a code of practice for employers which set out their responsibilities in regard to whistleblowing. I strongly believe that we should allow sufficient time to allow that code to have effect. This is because it has only been in place since last year and it will inevitably take time for employers and prescribed bodies to act on and investigate the disclosures made to them. It is, therefore, premature to make changes without properly assessing the evidence available. I am pleased, though, that the Minister for Small Business, Consumers and Corporate Responsibility discussed with the noble Lord that the Government intend to review the code in 2017 and will work with him to take this forward.

On the proposed protection for job applicants, I am grateful to the noble Lord, and to the noble Baroness, Lady Wheeler, for bringing forward these amendments. We strongly support the principle behind them, particularly as it applies to those who, in blowing the whistle, have sought to act with integrity in relation to the protection

of vulnerable children. There are, however, technical issues around the scope of some of the proposed measures, and their coverage of specific groups of workers or job applicants. Firstly, a Bill focusing on children's well-being does not seem to be an appropriate vehicle in which to capture the breadth of a local authority's recruitment arrangements. Secondly, there are practical difficulties in framing legislation like this by reference to qualifications or registrations that an applicant—in this case a social worker—may hold. To do that would mean that in some instances applicants for the same job might be afforded different protections. Additionally, it might be conceivable that an employer themselves would not be aware of all the applicant's professional qualifications or registrations if the applicant had not disclosed them because they were not relevant to the job being advertised.

*3.30 pm*

However, I hope that the noble Lord, Lord Wills, and the noble Baroness, Lady Wheeler, will be assured that we are taking what action we can at this stage, and that we see this as particularly important in the area of children's social care. That is why I am delighted that we have been able to work co-operatively with the noble Lord to support the principle of his proposed measure and in doing so to create a more pragmatic amendment within the scope of the Bill. We therefore agree with Amendment 53B that protections will apply to those seeking employment with specified public bodies in roles relating to local authorities' children's social care functions, and that those protections should apply to the whole of Great Britain in line with other employment legislation.

I therefore hope the noble Baroness has been reassured by our engagement on this important matter and the action we are prepared to take, and will be happy not to press the amendments in this group.

**Baroness Wheeler:** My Lords, on behalf of my noble friend—and on my behalf—I am very grateful for the support we have received on all sides of the House from your Lordships on this issue and for the Minister's response. Obviously, we are disappointed that he did not feel able to accept Amendments 52, 53, 72 and 73. On the issue of the need for a statutory code of practice, my noble friend made a strong case for this; indeed, the Public Concern at Work commission underlined that the code should be "rooted in statute", thereby underlining that protection for whistleblowers is a statutory requirement with parliamentary enforcement. We agree with that. However, we welcome the Government's commitment for a review of the working of the current non-statutory guidance next year and I hope the Minister will be able to provide the House with more information on this in due course, including reassurance that any review will be independent and will fully utilise the expertise available from leading organisations in this field.

However, I am delighted that the Minister has felt able to accept Amendment 53B. It is a real step forward —perhaps not as far as we would have wished, but it is progress nevertheless. Again, I thank the Minister and his colleagues in the other place on my noble friend's behalf. There is still much more work to be done and there is a need for a continuing dialogue about when this power will now be added to the Bill and when it will be exercised. The Minister will be in no doubt that my noble friend means business in pursuing this important issue. I beg leave to withdraw the amendment.

*Amendment 52 withdrawn.*

*Amendment 53 not moved.*

*Amendment 53A*

*Moved by* ***Baroness Armstrong of Hill Top***

**53A:** After Clause 28, insert the following new Clause—

"Post-removal counselling for parents and legal guardians

After section 19 of the Children Act 1989 insert—

"19A Post-removal counselling for parents and legal guardians

Where a child is permanently removed from the care of a birth parent or a child's guardian further to the powers under section 31 of the Children Act 1989 (care and supervision orders), a local authority must, so far as is reasonably practicable, provide a counselling service and commission therapeutic support for the parent or guardian of the child, in order to help them to keep any future children.""

**Baroness Armstrong of Hill Top (Lab):** My Lords, I know the Minister will think that I go on about the issue I am about to raise, and in a sense I am not apologising. I remind the House of my interests as chair of Changing Lives, a charity based in the north-east of England.

Children who are removed and placed in care are overwhelmingly from economically and socially deprived backgrounds. There has been a lot of evidence on this, recently and over many years. The experiences of those who try to parent in a profoundly unequal society are simply not considered sufficiently. That sounds a bit academic—let me explain what I mean. Mental health difficulties, substance misuse and domestic abuse are seen and accepted as central risk indicators for child abuse. However, these are intrinsically linked with living in poverty and disadvantage in a very unequal society. Psychosocial reactions to deprivation and shame, which are the experience I am talking about, are important in understanding self-harm and harm to others.

Currently, our policy has moved—on some occasions I have been part of that movement, and have resisted it on others—to being absolutely focused on the individual child, with very little space to consider the family context. As I have consistently argued in this House, the role of wider family members—of grandparents, siblings and friendship networks in supporting children—is too often neither recognised nor supported effectively.

Perhaps it would help if I reminded the House of an actual case which came from a Family Rights Group assessment—a study that was done on some of its advocacy work. The study says: "Julia cried as she explained that social workers had told her she was unable to have healthy adult relationships as a result of a brief period in care as a young child. Her child had been removed from her because it transpired that her partner had a history of abuse that she had been unaware of. She immediately separated from him and paid privately for counselling as it was not available

[Baroness Armstrong of Hill Top]
from the social worker, who was concerned with the child's welfare only. Despite her actions, the child was placed in care while a risk assessment was carried out. No one seemed to have considered the ironies here. Would such a separation, for example, result in this child being seen, too, as unable to have healthy adult relationships?". In other words, the whole system was reinforcing the problems, rather than tackling them.

The importance of attachment is recognised in study after study of child-rearing. Not to understand and consider that in our child protection policies is, at best, unwise. This amendment seeks to ensure that appropriate counselling and therapeutic support is offered to any parent whose child is permanently removed. The context of the amendment is that child protection inquiries are continuing to increase; the number of new care proceedings is at record levels. As of 31 March 2016, there were over 70,000 looked-after children in England, which is the highest figure since 1985. If this does not tell us that we have to think again about what we are doing, I do not know what will.

The new clause would enable any parent whose child has been permanently removed to get the therapeutic support and counselling to help them deal with their grief, emotional hurt and other difficulties, so they can avoid the appalling cycle of repeat pregnancies that lead to repeat removals of children. Analysis of court data found that one in four mothers subject to care proceedings was subject to repeat care proceedings. That figure rose to one in three for those who became mothers in their teenage years. Provisional results from further analysis show that more than six out of 10 mothers who had children sequentially removed were teenagers when they had their first child. Of these, 40% were in care, or had been looked after in the care system, during their own childhood.

The figures go on. Some 354 mothers were looked at in this study of recurrent care proceedings. It found that approximately 65% had had their mental health issues mentioned in their first set of proceedings; 75% had domestic abuse mentioned in their first set of proceedings; and 90% had experienced some form of neglect or abuse—emotional, physical or sexual—in their childhood.

The President of the Family Division has recognised the importance of the work that programmes such as Pause are doing in trying to make sure that there is not this cycle of repeat pregnancies and repeat admissions to care. But the programmes that are available, including the one we run in Newcastle, are not nationwide or underpinned by any statutory duty. Most vulnerable parents who have lost a child are therefore left unsupported emotionally and not assisted to parent in future. The new duties set out in the amendment would ensure that all parents who have lost a child receive the therapeutic care and counselling that would help them to avoid that cycle.

I move this amendment in the hope that, in thinking about the future of social work and children in care—and I know that the Government are doing that—they look carefully at the evidence on the importance of working effectively with women in vulnerable situations, so that they are better able to handle the trauma in their lives that inevitably adversely affects their relationships and those they can develop, particularly with their children.

The charity that I chair works with many women who are in this position. Among other work, we have a project in Newcastle that works with women recovering from addictions, and with their children, in a residential setting. Many of them have already lost children into care, and we work with them intensively for about six months. The programme has been successful in breaking that cycle, which has meant that the local authorities involved will happily talk to the Government and others about saving money through children not having come into care who otherwise would have. This is a really challenging time for the Government regarding the future of social work and children in care, and this is one way we can help to break a cycle that is not only depressing but destructive to the children and mothers involved. I beg to move.

**The Earl of Listowel (CB):** My Lords, I support the noble Baroness's amendment and what she has said. After witnessing this weekend, at a gathering of child and adolescent psychotherapists, the superb work that a therapist can do in supporting mothers and their infants to make good, strong relationships, I know that what she asks for is absolutely crucial. It was wonderful to see, for instance, the case of a mother who had grown up with a violent father, been taken into care and then gone on from care to become a teenage mother and have several of her children removed. Then she found the help of a child psychotherapist who helped her to understand her relationship with her child and to build a strong attachment with that child, so that eventually she was able to get back her other children. So I agree absolutely with what the noble Baroness is calling for. It is particularly important in the light of the recent view expressed by the President of the Family Division, highlighting the year-on-year increase in the number of children being taken into care, expressing the concern that that may well accelerate. It is much more difficult to give a high quality of care in the care system if the numbers of children arriving increase year on year.

I was grateful to the Minister for offering to meet me yesterday to discuss whether more can be done by central government to minimise the flow of children coming into care. I look forward to that meeting. I am particularly concerned about the new lower benefit cap and how it might impact on families. The noble Baroness, Lady Armstrong, highlighted the background of poverty for most families whose children are taken into care. I am concerned that this may increase that poverty and force more of these families into homelessness. It raises the risk of more children being taken into care—but we will debate that this evening in the dinner break.

**Lord Warner (CB):** My Lords, I support the amendment moved by the noble Baroness, Lady Armstrong. I remind the Minister that there have been many initiatives by far-sighted people, including judges such as Nicholas Crichton, who have looked at the issue of repeat pregnancies when a child is taken away from a birth mother.

There is a growing body of evidence, but what have the Government done to look at it in terms of cost-effectiveness? One's instincts are that this is a good investment. Certainly, sober judges have thought that this was a good investment and have raised the money to put some of these projects in place. Is it not about time the Government looked at the evidence on whether it is cost-effective to go to a scale on this kind of initiative?

*3.45 pm*

**Lord Ponsonby of Shulbrede (Lab):** My Lords, I agree with my noble friend. As a family lay magistrate who sits in central London, I hear many of the kind of cases about which we have heard today. It is worth repeating the point made by my noble friend: when we sit as a family bench we think primarily about what is in the best interests of the child. We are well aware that while it may be in the best interests of the child to be taken into care, it is not in the best interests of the mother. Many such mothers are themselves children. It is an obvious dilemma when we sit.

My noble friend was right that young women who lose their children, or have them taken away into care, need as much support as possible so that the tragic situation is not repeated again and again, as we see so often in our family courts.

**Lord Hunt of Kings Heath (Lab):** My Lords, my noble friend has made a convincing case for action in this area. We discussed this in Committee and the Minister was sympathetic to the principal points made by my noble friend. However, he put his eggs in the basket of encouraging innovative good practice and referred to his department's innovation programme and the funding that has been put into the Pause project to support women who have experience or are at risk of repeat removals of children from their care. He argued that it was better to support good practice than to mandate local authorities. I get that up to a point.

However, to pick up on the remarks of the noble Lord, Lord Warner, the problem is that we have been talking about innovative good practice in this area for a considerable number of years. As the Family Rights Group chief executive, on behalf of the Your Family, Your Voice alliance and the Kinship Care Alliance, has pointed out, looking at the country as a whole, we are not covering sufficient vulnerable people in the way we know can be successful, as these examples of good practice have shown.

This leaves us with a dilemma. I take the noble Lord's point about the risks of mandation, but if we cannot see from the Government a determined programme that will ensure that good practice is spread throughout every local authority area, we are forced back into the area of mandation. I hope the Minister will come forward with distinct proposals for how his department will make sure that, in every part of the country, the vulnerable people we are talking about will get the kind of support my noble friend has proposed.

**The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con):** I thank the noble Baroness, Lady Armstrong of Hill Top, for her amendment, under which local authorities would be required to provide counselling and therapeutic support to parents who have had children taken into care to prevent any further children being taken into care. This is an important issue and, contrary to the noble Baroness's introductory remarks, I am pleased that she has raised it and I am grateful to her, the noble Earl, Lord Listowel, and the noble Lords, Lord Warner, Lord Hunt and Lord Ponsonby, for their contributions to today's debate.

As their Lordships will know, the Government believe that children are best looked after within their families, with their parents playing a full part in their lives, unless intervention in that family's life is necessary. One of the fundamental principles of the Children Act 1989 is that children should be brought up and cared for within their families. Indeed, Section 17 of that Act embodies that principle, with local authorities under a statutory duty to provide services for children in need and their families to safeguard and promote the welfare of such children and promote their upbringing by their families. Local authorities also have a duty to return a looked-after child to their family unless this is against their best interests.

The noble Baroness is right to emphasise how important it is to support parents who have had children taken into care. They need the right type of intervention to allow them to be effective parents for that child if they are returned to them, any other children in their care and any children they may have in the future. We share this commitment, and the legislation and our statutory guidance, *Working Together to Safeguard Children*, reflect this. *Working Together* is clear that any assessment of a child's needs should draw together relevant information from the child, their parents and any other professionals in contact with them. Every assessment of need must be child-centred and must acknowledge that many of the services provided as part of a child in need or a child protection plan will be to support the parents to make sustained change so they can look after their children well.

Alongside the child's needs and wider family and environmental factors, parenting capacity is a crucial element of a good assessment, as *Working Together* makes clear. If support is needed to improve parenting capacity, a good assessment will identify this and enable the specific support needs identified—which will vary depending on the circumstances of each case—to be provided. If a child is removed, their parents should continue to receive help and support. If they go on to have further children, *Working Together* is clear that the level and nature of any risk to the child needs to be identified at a pre-birth assessment and the appropriate help and support given to these parents to support them with making a sustained change.

The noble Baroness might be interested to read, if she has not already done so, the research *Assessing Parental Capacity to Change when Children are on the Edge of Care: An Overview of Current Research Evidence*, published by the Department for Education in 2014. Among other things, the research sets out the parental factors that are known to be associated with a risk of significant harm to a child, the factors that can reduce the risk of harm and the likely nature of that harm. The report highlights the extensive body of research that shows that a range of problems can impair parents'

[Lord Nash]
ability to meet the needs of their children. These include, but are not restricted to, poor mental health, problem drug and alcohol use, learning disability and domestic abuse. This underscores the need to make sure that parents receive the right type of support to meet their particular needs and circumstances.

Of course, there may be circumstances where counselling will always be appropriate. Because adoption, unlike any other permanent option, involves the ending of a child's legal relationship with their parents and family, and the creation of a lifelong relationship with new parents, adoption agencies have a legal duty to provide a counselling service for the parent or guardian of the child. Local authorities and voluntary sector agencies that provide these services often, where appropriate, also use the service to support birth parents whose children have been taken into care. In the London Borough of Hammersmith and Fulham, for example, Ofsted inspectors found:

"In all cases seen by inspectors where placement orders had been granted, there was evidence of birth parents being offered referral to support services and mothers were offered referrals to commissioned services to avoid repeat pregnancies where proceedings were likely to result".

We know that the cycle of care too often continues and that parents who have a child taken into care may well be more likely to have another taken into care later. The noble Baroness referred to some depressing statistics in this regard. The Department for Education's innovation programme has supported the Pause project, to which the noble Baroness referred, to the tune of £3 million to support women who have experienced, or are at risk of, repeat removals of children from their care. The project aims to break this cycle and give women the opportunity to develop new skills and responses that can help them create a more positive future. Early indications are showing positive results for all 150 women Pause is currently working with, and in some instances the project is enabling them to engage in positive and consistent contact with their children.

Noble Lords will be pleased to hear that, given its success since Committee, the Secretary of State announced last week that further support is to be offered for programmes such as Pause to build on early successes of the programme, and that the programmes' reach would be extended from six to 47 areas, with up to a further £7 million. This will provide much-needed further evidence on which we can assess our proposals. I hope the noble Lord, Lord Hunt, is pleased to hear that.

Through the innovation programme, we are also continuing to fund the family drug and alcohol court service, which provides therapeutic support to parents whose children are at risk of being taken away from them. Again, often these are parents who have had other children taken into care in the past.

Changing practice like this provides a more effective means of ensuring that we break the cycle. Mandating that local authorities provide counselling or therapy may help some, but it will not be the answer to all the complex problems in this context and will not provide the right support to all parents.

Given that the existing statutory framework is clear that local authorities must provide services to support children in need and their families to stay together, and the innovative ways that we aim to change practice, including further support for Pause and other projects, so that we can build up further evidence, I hope the noble Baroness will feel reassured enough to withdraw her amendment.

**The Earl of Listowel:** That is such good news regarding the funding of Pause and the family drug and alcohol court. There has been concern about the continuing funding of both those. Will the Minister clarify that the future funding of the family drug and alcohol court is secure? Perhaps he would like to write to me on that point.

**Lord Nash:** I will do that.

**Baroness Armstrong of Hill Top:** My Lords, I thank everyone who has taken part in this short debate. I think it is clear to the Minister that concerns about this matter are felt around the House. I am pleased that he is committed to thinking more about those concerns and to action. I mentioned Pause. That is not the programme we use, partly because women are not entitled to become part of the programme until they have already had two children taken into care. We wanted to be able to intervene if necessary and if possible before then. I would be interested in talking further to the Minister about this, working with him and inviting him to look at some of the work going on that would support what is proposed in the amendment. We tabled the amendment on the basis of wanting the House to think about the matter and to push the Government further. On the basis that I believe that the Government are taking this issue on board—although I am not yet satisfied—I shall withdraw the amendment at this stage in the hope that the Government will demonstrate to me that they are prepared to continue to work on it.

*Amendment 53A withdrawn.*

*Amendment 53B*

*Moved by* ***Baroness Wheeler***

**53B:** After Clause 28, insert the following new Clause—

"Children's social care: pre-employment protection of whistle-blowers

(1) Part 5A of the Employment Rights Act 1996 is amended as follows.

(2) In the Part heading omit "in the Health Service".

(3) In section 49B, in the heading, at the beginning insert "The health service:".

(4) After section 49B insert—

"49C Children's social care: regulations prohibiting discrimination because of protected disclosure

(1) The Secretary of State may make regulations prohibiting a relevant employer from discriminating against a person who applies for a children's social care position (an "applicant") because it appears to the employer that the applicant has made a protected disclosure.

(2) A "position" means a position in which a person works under—

(a) a contract of employment,

(b) a contract to do work personally, or

(c) the terms of an appointment to an office or post.

(3) A position is a "children's social care position" if the work done in it relates to the children's social care functions of a relevant employer.

(4) For the purposes of subsection (1), a relevant employer discriminates against an applicant if the employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants for the same position.

(5) Regulations under this section may, in particular—

(a) make provision as to circumstances in which discrimination by a worker or agent of a relevant employer is to be treated, for the purposes of the regulations, as discrimination by the employer;

(b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;

(c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;

(d) make provision for the making of awards of compensation calculated in accordance with the regulations;

(e) make different provision for different cases or circumstances;

(f) make incidental or consequential provision, including incidental or consequential provision amending—

(i) an Act of Parliament (including this Act),

(ii) an Act of the Scottish Parliament,

(iii) a Measure or Act of the National Assembly for Wales, or

(iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).

(6) Subsection (5)(f) does not affect the application of section 236(5) to the power conferred by this section.

(7) "Relevant employer" means any of the following that are prescribed by regulations under this section—

(a) a local authority in England;

(b) a body corporate that, under arrangements made by a local authority in England under section 1 of the Children and Young Persons Act 2008, exercises children's social care functions;

(c) a person who, as a result of a direction under section 497A(4) or (4A) of the Education Act 1996 as applied by section 50 of the Children Act 2004 (local authorities in England: intervention by Secretary of State) exercises children's social care functions;

(d) the council of a county or county borough in Wales;

(e) a person who, as a result of a direction under any of sections 153 to 157 of the Social Services and Well-being (Wales) Act 2014, exercises children's social care functions;

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

(8) A "local authority in England" means—

(a) a county council in England;

(b) a district council;

(c) a London borough council;

(d) the Common Council of the City of London (in their capacity as a local authority);

(e) the Council of the Isles of Scilly;

(f) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009.

(9) "Children's social care functions"—

(a) in relation to a relevant employer referred to in subsection (7)(a) to (c), means functions of a local authority in England under—

(i) any legislation specified in Schedule 1 to the Local Authority Social Services Act 1970 so far as relating to those under the age of 18;

(ii) sections 23C to 24D of the Children Act 1989, so far as not within sub-paragraph (i);

(iii) the Children Act 2004;

(iv) any subordinate legislation (within the meaning given by section 21(1) of the Interpretation Act 1978) under the legislation mentioned in sub-paragraphs (i) to (iii);

(b) in relation to a relevant employer referred to in subsection (7)(d) or (e), means any functions relating to the social care of children in Wales that are prescribed by regulations under this section;

(c) in relation to a relevant employer referred to in subsection (7)(f), means any functions relating to the social care of children in Scotland that are prescribed by regulations under this section.

(10) The Secretary of State must consult the Welsh Ministers before making regulations under this section in reliance on subsection (7)(d) or (e) or (9)(b).

(11) The Secretary of State must consult the Scottish Ministers before making regulations under this section in reliance on subsection (7)(f) or (9)(c).

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

(a) "worker" has the extended meaning given by section 43K, and

(b) a person is a worker of a relevant employer if the relevant employer is an employer in relation to the person within the extended meaning given by that section."

(5) In section 230(6) (interpretation of references to employees, workers etc) for "and 49B(10)" substitute ", 49B(10) and 49C(12)".

(6) In section 236(3) (orders and regulations subject to affirmative procedure) after "49B," insert "49C,"."

*Amendment 53B agreed.*

*Amendment 53C*

*Moved by* ***Baroness Thornton***

**53C:** After Clause 28, insert the following new Clause—

"Legal aid: families with children experiencing domestic violence

In Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012, after paragraph (2) insert—

"(2A) A general practitioner or other health professional may not charge for the provision of evidence of domestic violence or risk of domestic violence, where the domestic violence has taken place, or is at risk of taking place, in a family which includes children.""

**Baroness Thornton (Lab):** My Lords, Amendment 53C seeks to insert a new clause into the Bill. I have not participated in the passage of the Bill to date, but I have followed its progress with great interest and am pleased to bring this important matter for the consideration of the House today. The aim of the amendment is to put an end to the practice of GPs charging domestic violence victims a fee for producing the letter they need to access legal aid.

As noble Lords will remember—some of us remember it very distinctly—legal aid is now available for private family law matters only where an individual can prove

[Baroness Thornton]
that they are a victim of domestic violence. A person must produce specific evidence to qualify, and one way to do it is through the provision of medical evidence.

Doctors are free to levy an unspecified fee for providing this medical evidence, as it sits outside the NHS contract—and it seems that some are doing so. This seems inappropriate at every level. For a woman on a low income, who may be on benefits or financially controlled and coerced by an abusive partner, paying a fee could seem almost impossible. I think that this is most unfeeling. Sometimes these women are struggling financially and may have to make a choice between a fee to the doctor or paying the bills.

*4 pm*

It is bad enough that since the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, too many affected by domestic violence continue to be denied access to legal advice and representation in the family courts, owing to restrictions under which victims have to gather evidence in order to prove their claim. Data from Rights of Women show that 40% of victims still do not have the required forms of evidence to access legal aid. It is not difficult to imagine the dilemma that these women face. Should they pay a fee and get in debt? The alternatives might be to face their abuser in court, unrepresented by a lawyer, or do nothing and continue to be at risk of violence.

My honourable friend in the Commons, Tom Watson MP, was moved by the plight of women in this situation to start the Scrap the Fee campaign. This was after visiting a community project called Safe Spots in Wythenshawe, Greater Manchester, where one volunteer, Lisa—herself a survivor of domestic violence—asked him for help with this specific issue of GPs charging domestic violence victims for a legal aid letter. Sarah Green from the End Violence Against Women coalition says that the charge adds yet another legal barrier.

The legal profession agrees that these charges should be scrapped. Jonathan Smithers, a former president of the Law Society, said:

"The harsh tests requiring people to bring evidence to satisfy the broader statutory meaning of domestic violence are not what parliament intended".

Would the Minister agree with that? Jonathan Smithers continued:

"Without legal aid, women are unable to access family law remedies, which are vital in order to help them escape from violent relationships and protect their children. They are being forced to face their perpetrators in court without legal representation".

As Tom Watson rightly points out, domestic violence victims suffer enough. No GP should charge a victim of domestic abuse for a letter they need to access legal aid. It is unfair and immoral. I hope the Minister will agree that this has to stop. I beg to move.

**Baroness Howarth of Breckland (CB):** My Lords, briefly, I support the noble Baroness. I know that the Government are committed to both safeguarding and equality, and this is a safeguarding and equality issue. It has always amazed me, after my years in Cafcass—I am sure the noble Baroness, Lady Tyler, would agree with this—that women who suffer domestic violence, whose children are often likely to face that violence, must prove that they are in that situation before they can get legal aid to go to court. That is an injustice and I hope that the Government will look at this carefully. It is one example of the very broad issue of legal aid, but a very pertinent one in relation to children.

**Lord Watson of Invergowrie (Lab):** My Lords, my noble friend Lady Thornton clearly outlined the issues involved in this amendment. Domestic violence victims suffer enough. GPs should not be able to charge them to access justice because in many cases that will, in effect, deny them justice. The fee that can be charged for a letter is, as my noble friend said, discretionary—but where GPs charge it can range anywhere from £20 to £180. All too often, that would be impossible for the victim to pay. We have no knowledge of how many GPs charge because the Government do not hold that information. There is a clear need to collect it because this is a loophole in the legal aid regulations that needs to be closed.

Calls for change are not restricted to domestic violence support groups. Many MPs and Peers also support the need for change, as do both the medical and legal professions. The British Medical Association was dismayed not to be consulted prior to the regulations being introduced and made it clear that it would have opposed the inclusion of medical evidence, if only on the basis that such requests can compromise the doctor's relationship with their patient.

As my noble friend Lady Thornton said, the Law Society agrees that these changes should be scrapped. Indeed, its former president said:

"Without legal aid, women are unable to access family law remedies, which are vital in order to help them escape from violent relationships and protect their children. They are being forced to face their perpetrators in court without legal representation".

The Government should listen to the medical and legal experts. Above all, they should listen to women who suffer at the hands of the men who perpetrate this appalling abuse.

In a debate in another place on 15 September the Parliamentary Under-Secretary of State for Justice, Dr Phillip Lee, said:

"Where arrangements have been found wanting, we have taken action. For example, when the Court of Appeal ruled earlier this year that elements of the evidence requirements for making legal aid available to victims of domestic abuse in private family cases were invalid, we changed the regulations as an interim measure ".—[*Official Report*, Commons, 15/9/16; col. 1117.]

I ask the Minister now: if an interim change can be made in one instance, why not in this one?

The Government acknowledge that there are issues with the current system because they consulted specifically on evidence requirements for accessing legal aid in private family cases; that consultation closed in July. If this is an unintended consequence of poorly drafted legislation, it needs to be changed. I look to the Minister to show what I hope will be leadership on this issue and say that he will take this forward and discuss with ministerial colleagues how to bring about the required change, rather than say simply that the Government will report in due course with potential changes. Victims of domestic violence are losing out now, so change is urgent. It is a question first and foremost of supporting women who suffer domestic violence; it is also a question of natural justice.

**Lord Nash:** My Lords, I thank the noble Baroness, Lady Thornton, for her amendment and for the points that she, the noble Baroness, Lady Howarth, and the noble Lord, Lord Watson, have made. I understand that the concerns around GPs charging for evidence are shared by others, including the Law Society and Rights of Women. I also note that Tom Watson MP, deputy leader of the Labour Party, launched a campaign related to this issue in September. Before addressing their points, it may be helpful if I briefly explain the purpose of the regulations to which the tabled amendment refers.

The reforms introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 removed most private family matters from the scope of legal aid. These were mainly matters concerning child contact arrangements following separation. A clear exception to the scope of these reductions was for family cases involving the appalling crime of domestic violence, for which legal aid is available provided that applicants can produce a piece of objective evidence from those listed at Regulation 33 of the Civil Legal Aid (Procedure) Regulations 2012. A letter from a health professional, including a GP, is one of the specific pieces of evidence listed. Such letters are one of the most common ways that victims evidence their abuse: around 25% of applicants rely on it currently. In the letter, the GP must confirm that the victim has been examined and has injuries or a condition consistent with being a victim of domestic violence. The examination must have taken place within five years of an application for civil legal services. GPs are not required to provide a full report of the violence, just a brief letter for which a template is provided by the Legal Aid Agency. The template was designed in conjunction with the Royal College of GPs.

The Ministry of Justice does not believe that there is a need for GPs or health professionals to charge for writing a letter, although we recognise that this may happen on occasion. I am sure we can all agree that none of us wishes to see unnecessary barriers placed between victims of domestic violence and the help that they need, and I understand the concerns raised by noble Lords. However, I worry that in the absence of alternative funding arrangements or legislation compelling GPs to provide this service to victims, GPs may choose not to provide the evidence following this amendment. That could be counterproductive and prevent victims accessing legal aid. In any event, the House should be aware of an extensive programme of work currently being undertaken by the MoJ, looking not just at this specific issue but at the domestic violence evidence requirements for legal aid more generally. It is worth me elaborating on this a little further.

The Government have broadened the domestic violence evidence criteria three times since implementation; they were most recently amended in April this year. Upon announcing the latest amendment, the Minister then responsible for legal aid announced to the House of Commons that the Ministry of Justice had begun work with domestic violence support groups, legal representative bodies and colleagues across government to gather data and develop their understanding of the issues encountered by victims in obtaining evidence, with the aim of drawing up replacement regulations. The Law Society and Rights of Women are among those with whom the Government have been working collaboratively over the summer. Among other things, the work has involved a large survey of legal aid providers and domestic violence support organisations, as well as a series of focus groups facilitated by Women's Aid with victims who have had experience of providing evidence. The work is looking at all types of evidence set out in regulations, not just letters from GPs and health professionals, as well as issues around accessibility more generally. The Ministry of Justice is considering the findings and will announce any change to regulations in due course.

I reassure the House that the Government strongly believe that victims of domestic violence must have access to the help they need, including access to legal services funded through legal aid. The extensive research work undertaken by the Ministry of Justice is a reflection of that. I am sure that my colleagues will be happy to meet the noble Baroness to discuss the matter in more detail, and I will certainly take back the particular point made by the noble Lord, Lord Watson. However, in view of what I have said, I hope that the noble Baroness will feel reassured enough to withdraw the amendment.

**Baroness Thornton:** I thank the Minister for that detailed and comprehensive answer. My only complaint is that he did not accept my amendment, because he has covered all the bases. Clearly there is more to discuss. I thank him for his answer and will certainly accept the invitation to discuss this further. I beg leave to withdraw the amendment.

*Amendment 53C withdrawn.*

### *Clause 29: Power to test different ways of working*

*Amendment 54*

*Moved by* ***Lord Nash***

**54:** Clause 29, page 20, line 25, at end insert—

"( ) Regulations under this section may not be used so as to remove any prohibition on a local authority in England arranging for functions to be carried out by a body whose activities are carried on for profit."

**Lord Nash:** My Lords, I want to start by setting out the Government's case for why the power is needed before I come to speak about the amendments that I have tabled in this group. The Government believe that the legislative framework is the bedrock of children's social care services. It provides the critical architecture that protects the rights of children and young people. We believe this framework is essentially correct. However, at times we have legislated in response to failure with laws that are focused on achieving the right outcome but have unintended consequences on the ground.

The Munro review in 2011 showed us that overregulation can get in the way of good social work practice and prevent social workers putting children's needs and wishes first. Too often legislation not only sets out what local authorities need to do to protect children but gives a significant level of detail about how they should do it.

[LORD NASH]

We believe that changes to legislation should be built on evidence of what works in practice, but at present we do not have the ability to trial some of the new ideas local authorities tell us about; we can change the law for all or for none. The power would allow us to test new grass-roots approaches with careful controls, monitoring and evaluation. This might mean, for example, testing more flexible approaches for assessing kinship carers or trialling a new approach to the reviewing process.

The power to test different ways of working is about putting those on the front line in the driving seat and empowering them to find better ways of working to protect the children in their care. This is not about local authorities opting out of their legal duties towards children or being allowed to remove services. It is about empowering them to try something different. By passing this power, we would be creating the opportunity for local authorities to consider how they can give children the best possible service, starting from the needs of the children and their own professional expertise, rather than from a set of regulatory requirements. These provisions will empower professionals to look at international examples and their own experience to design the best possible service for the children in their care.

Not every idea will be a good one, and not every application will be granted. This is why it is so important that there is a robust scrutiny process about how the power is used to ensure that no trial is granted that questions the fundamentals of children's rights or would not be in their best interests. I know that some concerns have been raised about the scrutiny of proposals and the safeguards surrounding how this power is used. It is absolutely right that noble Lords should want reassurance on this point.

I have considered carefully the views raised in Committee and the extensive discussions we have had around this since. I would like to take this opportunity to outline the amendments the Government have made to improve these clauses and provide more robust and transparent safeguards.

I shall speak first to Amendment 54. As I said on the first day on Report, when we discussed the amendment on profit tabled by the noble Lord, Lord Ramsbotham, I recognise that this is a sensitive area. I also know that there have been concerns from those in this Chamber that the power to innovate could be used to revisit restrictions on profit-making. I have said before, and I will say again, that the Government have no intention for these clauses to be used to amend restrictions on profit-making. However, to put this point absolutely beyond doubt. I have tabled a government amendment to rule out use of the power to amend restrictions on profit-making in children's social care. I hope this amendment makes it clear to the House that these clauses have nothing to do with profit-making in children's social care.

*4.15 pm*

I turn next to Amendments 55, 56 and 60. One of the key issues that we have heard from noble Lords is the need for a more rigorous and transparent process for considering applications. To this end, the noble Lords, Lord Watson and Lord Warner, have tabled an amendment to introduce a panel to comment on applications to use the power. I agree with the noble Lords' intention here, and to give it practical effect I have tabled a similar amendment to introduce an expert advisory panel to scrutinise applications to use the power, and I am grateful to them for raising this point.

The panel will include Her Majesty's Chief Inspector and the Children's Commissioner, as well as other representatives with relevant expertise to an application, including a representative from the voluntary sector, a practice expert and a representative from local government. The panel will be able to consider the full application, including all of the details of the consultation a local authority has undertaken ahead of applying for the power, their assessment of the risk to children, and the safeguards and the monitoring and evaluation arrangements proposed.

The Secretary of State must ask for the advice of the panel on how a trial would impact on children and the monitoring arrangements in place. However, the panel will also be able to comment on wider aspects of the application. The panel's advice will be published ahead of regulations being laid, and it will be available to Peers alongside an explanatory report from the Government to help inform the parliamentary scrutiny process.

Amendment 59 concerns parliamentary scrutiny of applications. As I said in Grand Committee, I have listened to noble Lords' concerns and considered the advice of the Delegated Powers and Regulatory Reform Committee. I have therefore tabled this amendment to strengthen parliamentary scrutiny of use of the power. The Joint Committee on Human Rights, in its report on the Bill, has said it welcomes this amendment. The amendment broadens the range of applications for use of the power that will be subject to the affirmative resolution procedure, so that both primary legislation and secondary legislation originally passed through the affirmative procedure will follow the affirmative route. Only secondary legislation passed through the negative procedure, and applications by the Secretary of State to end a trial by revoking regulations, will be subject to the negative procedure. This change is important as it will ensure that many more applications will be subject to debate in both Houses.

In addition, the amendment provides that the Secretary of State will, for each application to use the power, lay before Parliament an explanatory report setting out the details of the local authority's request and an assessment of the impact on children. I hope noble Lords will agree that this report, alongside the published advice of an advisory panel, will provide the detailed information that Parliament needs to properly scrutinise requests. The final government amendment in this group, Amendment 67, is a technical amendment that clarifies the definitions of "child" and "children" which feature in the two amendments I have just discussed.

I would like to take this opportunity to set out the entire application process in full, to reassure noble Lords of the very detailed level of scrutiny each application will gain. A local authority that wants to use the power must consult locally on its proposal. The legislation

sets out that, as a minimum, consultation must take place with safeguarding partners. However, we will set out in guidance to local authorities more detail on what we expect from applications. For example, strong applications, particularly those where more significant changes are proposed, would require consultation with all affected parties, including, for instance, children in care, councils and affected families. The local authority would then submit an application to the Secretary of State, who would carefully scrutinise it, looking at safeguards, the proposed monitoring and evaluation procedures, and the likely impact on children. If she decides to proceed, she must ask the advice of the expert advisory panel.

Having considered the panel's published advice and having made any resulting changes, the Secretary of State would then lay regulations in Parliament to be scrutinised in both Houses, if she was satisfied that it was right to proceed. This will be accompanied by an explanatory report, setting out the intended benefits, why there is not expected to be any detrimental effect on children's welfare, and the monitoring and evaluation arrangements. If the regulations are passed by Parliament, the resulting trial will be carefully monitored and evaluated as agreed in the application. All applications will be granted only for a time-limited period. If, following a successful trial, the Government wanted to change the law for all local authorities, the full parliamentary process would apply. To summarise, there will be local consultation, advice from an expert panel and parliamentary scrutiny for every application.

I hope noble Lords can see that these clauses are a genuine attempt to help front-line practitioners and us as lawmakers to work together to ensure that our legislation genuinely works in the best interests of children.

**The Deputy Speaker (Lord Dear) (CB):** My Lords, I draw noble Lords' attention to four of the amendments in this grouping. If Amendment 57 is agreed, I cannot call Amendment 59 by reason of pre-emption. Similarly, if Amendment 61 is agreed, I cannot call Amendment 62 for reasons of pre-emption.

**Lord Ramsbotham (CB):** My Lords, I shall speak to my Amendments 57, 58, 64 and 68. I begin, however, by welcoming government Amendment 54, following an amendment that I tabled earlier in the proceedings of the Bill, and hope that it will remain the Government's position even if, as I hope, Clause 29 is left out of the resulting Act.

I acknowledge the case that the Minister has made for retaining the section headed "Children's social care: different ways of working", but each of my amendments seeks to leave out a separate clause, thus removing the whole section. Since we discussed these clauses in Grand Committee, no one could accuse Ministers or their officials of being idle, including as they have—among a deluge of letters, amendments, explanatory documents and offers of meetings—a policy statement on the power to test different ways of working and government Amendments 55, 56 and 59, which spell out the parliamentary procedures applicable to any use of Clause 29 to exempt from or modify existing legislation, and Amendment 61, which introduces the proposal of the appointment of an expert advisory panel.

However, I submit that Clauses 29 to 33 amount to nothing less than the subversion of Parliament's constitutional position. It is not only wrong but totally unnecessary, in view of existing arrangements, to process proposed innovation because new ways of working can already be tested within the existing legal and regulatory frameworks, as my noble friend Lord Warner will explain. Therefore I contend that, however outwardly reasonable the processes proposed by the Government may seem, they do not alter the need to leave out Clauses 29 to 33 of the Bill for reasons of constitutional and legal principle, as I will attempt to explain.

I emphasise that I am in no way opposed to innovation or a bottom-up approach to it, a lifetime in the Army having taught me that the best way to make improvements is to identify good practice somewhere and turn it into common practice everywhere. I agree that good local authorities often feel frustrated and restricted by legislation, regulation and excessive bureaucracy, but it is of interest that when the Department for Education brought in similar powers for schools they were virtually never sought. That the Government have produced so many amendments to a Bill that was sprung on us at such short notice reinforces the suspicion that, rather than the result of careful consideration, it was in fact a panicked reaction to this year's report by the Ofsted single inspection framework that the social care work of three-quarters of local authorities inspected either was inadequate or required improvement, which, had they been parents, might have resulted in their children being placed in care.

At Second Reading I quoted the regret of the Constitution Committee of this House that,

"despite the concerns expressed in the past by this and other committees, the Government continues to introduce legislation that depends so heavily on an array of broad delegated powers".

I also quoted the noble Baroness, Lady Smith of Basildon, who, referring to this Bill in particular in a debate about the balance of power between the Government and Parliament, said that,

"there are more provisions for the Secretary of State to use regulations than there are clauses in the Bill, including on issues that should be considered matters of significant policy".—[*Official Report*, 9/6/16; col. 860.]

I suggest that the mechanism for innovation set out in the clauses amounts to nothing less than the usurpation of the proper parliamentary process and subversion of the rule of law. I am not alone in believing that it is entirely inappropriate for primary legislation to be amended by regulations made by a Secretary of State at the request of, and applicable to, a single local authority.

In addition, all legal duties and obligations placed on local authorities by children's social care law are ultimately enforceable by the courts, meaning that if a local authority fails to meet its statutory obligations, the young person or family concerned can take legal action to ensure that the protections laid down by Parliament are put in place, but the courts will be unable to enforce the rights of the young person or family concerned if a local authority has received an exemption from acting in accordance with the law. I therefore ask the Minister how the courts are expected to respond where a young person or child in a particular local authority area is clearly disadvantaged by the arbitrary disapplication or modification of the law as it is applied in all other parts of the country.

[LORD RAMSBOTHAM]

Clause 29 has been mentioned many times in connection with previous amendments which were tabled because of fears that the Secretary of State might use it to set aside legislation and regulations in a number of specific areas, such as the care of unaccompanied asylum-seeking children, whose care status has been adversely affected by the provisions of the Immigration Act 2016.

As I have said many times in this House in connection with prisons, not all local authorities are good, and the Government must always strive to ensure that standards of care for vulnerable children are not a postcode lottery by imposing and overseeing consistency. I suspect that the acknowledged importance of consistency is behind many of the other proposals in the Bill, such as corporate parenting principles, safeguarding arrangements and social worker regulations.

I have been struck by the united opposition to the clauses of so many practitioners, some of whom I shall cite. The Professional Standards Authority states that it has some concerns about the current drafting of the clauses relating to its power to scrutinise and refer fitness-to-practise decisions to the High Court. Together for Children has more than 104,000 signatures to a campaign for their removal. Article 39, representing 43 involved voluntary organisations, sees them as a smokescreen for deregulation which poses profound risks for children. No deregulation is allowed in adult social care, but the clauses could be used to remove transition-to-adulthood entitlements from disabled children until the age of 18, and from care leavers until the ages of 21 or 25.

The Local Government Association has found that councils are struggling to cope with reduced government funding, and that the specialised care that some children need for conditions that we were assured were covered by the very welcome government Amendment 1 is at risk, because the need to maintain a core statutory service leaves little room for discretionary cost savings and efficiencies. In welcoming the powers in Clause 29, subject to the additional safeguards set out in the policy statement, the Local Government Association is, however, concerned that Clause 32 gives the Secretary of State power to remove legislative provisions from a local authority in intervention without any local democratic scrutiny or consultation with local partners. The Royal College of Nursing is concerned that local authorities may use the clauses to water down nationally agreed standards set out in the Children Act 1989, leading to unacceptable local variations in outcomes for children. The British Association of Social Workers points out that there is no detail in the Bill about monitoring or quality assurance of any authorised different way of working, or who is responsible for it. UNISON reported last week that 69% of social workers oppose any exemptions on the ground that they would lead to more children being put at risk, and so on. Such a wide spectrum of opposition inevitably raises the question of whether the Government actually consulted these practitioners before making their proposals.

*4.30 pm*

In conclusion, these clauses seem like a bad idea dreamed up in Whitehall that have not been properly evaluated or impact-assessed. Their introduction appears very likely to result in the unhelpful adversarial dimension to the relationship between children and young people and their local authorities in their role of corporate parents, which the Minister said he feared in his response to my amendment about access to legal advice.

The National Audit Office, which has already cited concerns about the lack of a credible whole-systems approach to the quality of children's social work across the country, is hardly likely to endorse anything that so detracts from so much that is good in the Bill. I presume that the Government are taking the criticisms of the United Nations Convention on the Rights of the Child seriously. Based on that presumption, which I hope is not a pious one, I ask the Minister to at least withdraw the clauses for further consideration, which I hope will include full and proper consultation with extremely worried practitioners who have indicated that they are ready, willing and able to collaborate with the Government to design a framework for innovation that satisfies both parties, and most importantly, leads to improvements in the lives of these very vulnerable children.

**Lord Watson of Invergowrie:** My Lords, since the Bill had its Second Reading, there has been a wide and varied selection of briefing meetings provided by Ministers and civil servants. In some cases, outside experts were also present, and I commend the Minister for facilitating these sessions, which in many ways have proved helpful in enabling noble Lords to better understand the Bill and to articulate our concerns in greater detail than is possible in this Chamber, or indeed in Committee.

Much progress has been made, and this has resulted in a number of concessions by the Government, particularly in respect of Part 2, on social workers. However, I am confused, having heard the Minister's opening remarks. He said, and I am pretty sure I am quoting quite accurately, that Clause 29 was not about local authorities opting out or removing services from them. However, Clause 29(2) says:

> "The Secretary of State may by regulations … exempt a local authority … from a requirement imposed by children's social care legislation".

Surely the Minister's remarks and the Bill are at odds. Perhaps he can explain that when he replies.

That said, and for all the discussions we have had, we still do not believe, as the noble Lord, Lord Ramsbotham, said very powerfully, that it has been possible for a convincing case to be made by Ministers as to why the exemptions outlined in Clause 29 are necessary. For the avoidance of doubt, it should be made clear that innovation in the delivery of local authority children's services is to be welcomed. Indeed, throughout this process, I cannot recall anybody—whether noble Lords or people from the various organisations who have assiduously and very helpfully provided us with briefings—argue against innovation per se, or as the Bill describes it, the power to test new ways of working.

The terminology is not that important. What matters is that the children's services are delivered comprehensively, effectively and safely, and that these services are available across the country. The standard may vary, though that can and must be addressed when it arises. The nature of the services provided should be, as near as possible, uniform across the country. This is about

defending children's social care rights. The alternative is a postcode lottery, as was referred to by the noble Lord, Lord Ramsbotham.

I am sure the Minister would not want that, yet I cannot see how such an outcome is anything other than inevitable if a local authority is allowed to withdraw from providing a service while the neighbouring authority continues to provide it. Exemptions from service provision raise the prospect of looked-after siblings living in different areas having different legal safeguards, and children from different local authorities living in the same children's home having different forms of legal protection. How can that be regarded as a step forward?

The Government set out their stall in their strategy *Putting Children First*, which was published in July. It referred to,

"a controlled environment in which we could enable local authorities to test deregulatory approaches that are not currently possible, before taking a decision to make substantial changes to existing legislation that would apply across the board".

However, the document itself did not identify the "deregulatory approaches" that cannot be tested presently. In the document, the Chief Social Worker for Children and Families asserts:

"We must be enabled to use our professional judgment in flexible and creative ways, rather than having to follow a procedural path or series of legal rules".

For the chief social worker to seek to avoid having to follow "legal rules" is worrying at the very least and invites the question as to whose side she is on; some have recently questioned whether the answer is vulnerable children. If local authorities are unable to provide a full and effective service in social care, then the main reason is usually a lack of resources, especially in terms of staffing. I think it is pertinent to ask: why is the chief social worker not using her position of influence to campaign for more resources to enable her fellow social workers to do their job to the best of their ability, rather than undermining and demoralising the profession as many social workers feel that she is doing?

The bottom line is that Clause 29 is not necessary. We have been unable to find any evidence that local authorities have their hands tied by existing legislation to the extent that they cannot test "new ways of working". I am not going to repeat the list of a dozen councils that I gave to the Minister in Committee, and there are more. The message is clear: there are no impediments to such change; at least, it appears from the evidence that none cannot be overcome. Clauses 29 to 33 would undermine a rights-based approach to children's social care. In doing so they risk removing vital protections from vulnerable young people who rely on the law to keep them safe and guarantee the provision of essential services. I accept that is not what the Minister intends. Of course it is not. However, many people involved in the sector are absolutely clear that that would be the result.

The Government have come forward with a number of what they regard as safeguards. The powers cannot be used to make a profit. I certainly echo the noble Lord, Lord Ramsbotham, in welcoming government Amendment 54. The affirmative resolution procedure will be required to make exemptions from or modifications to legislation. The Secretary of State must consult an expert panel to advise her before she makes any recommendations. However, I contend that these are all open to question. We believe that the Government's ultimate intention is to open up the field of social work services completely, either to the private sector or to the third sector, with local authorities having their role reduced to a bare minimum. Initially, the most attractive services would be outsourced, but in time the only services not outsourced will be the less attractive and the more problematic ones. At that point, the only means of taking them out of local authority control will be by allowing them to be run for profit and, at that stage if not before, this section of the Bill would be amended, just as so many pieces of children's protection legislation are amended in this Bill.

As for affirmative resolutions, it is extremely rare for statutory instruments presented to Parliament to be rejected, whether they follow the negative or the affirmative resolution procedure. Indeed, the Hansard Society recently reported that over the past 50 years, a mere 0.01% of such instruments have not been passed. That is one in 10,000. Given the "take it or leave it" proposition inherent in them, that is perhaps not too surprising, but it does take most of the wind out of the Minister's sails as regards his Amendments 55 and 56.

It is perhaps instructive that the panel is described as an expert panel, rather than an independent panel as we seek in Amendment 60. The reason is clear, though, because in no way could the people mentioned in Amendment 61 be regarded as independent. Two of them are there ex officio, having been appointed to those offices by the Secretary of State. The two "other persons" to join the panel would be chosen by—that is right—the Secretary of State. Given that the Government have made their long-term plan clear in *Putting Children First,* it would be a brave panel member who argued against a local authority request being approved. The suspicion is that those panel members would become the equivalent of regional schools commissioners, charged with the de facto responsibility of removing services from local authorities as widely as possible.

There are rigorous safeguards that the Minister could consider, such as limiting the powers to local authorities rated good or outstanding; requiring local authorities seeking exemption to hold full and open local consultations, based on a properly considered assessment of the impact of the exemption on the children and families concerned; or perhaps most importantly, requiring that exemptions are not used to reduce overall investment in children's social care.

Clause 32 also remains a worry, because local authorities in intervention is the most likely situation in which those powers will be used and because the Bill gives responsibility for that to the Secretary of State, without the consultation of local partners that exists for Clause 29. That is why we have submitted Amendment 65, suggesting that the Secretary of State must consider the advice of the Children's Improvement Board.

The Minister must be aware of the opposition to Clause 29. A petition calling for the exemption powers to be scrapped has received over 100,000 signatures. More than 40 expert organisations have come together

[Lord Watson of Invergowrie]
to oppose the inclusion of these clauses in the Bill. Last week UNISON published a report which showed that, in a survey of almost 3,000 of its social workers, just one in 10 supported the Government's proposals.

This clause, and the ones which relate to it, have long been the main concern of noble Lords and a wide range of opinion beyond. I accept that the Minister has tried to mitigate its effects and the fears that it has engendered, but I am afraid he has not succeeded. For that reason, should the noble Lord, Lord Ramsbotham, decide to press Amendment 57, he will have the support of these Benches.

**Lord Warner:** My Lords, as someone who strongly supports reform and innovation across the public services, I rise, perhaps a little surprisingly, to support Amendments 57, 58, 64, 66 and 68, tabled by the noble Lord, Lord Ramsbotham, and to which I have added my name. I will not rehearse again the arguments that he and the noble Lord, Lord Watson, have made, and with which I totally agree. I welcome, and accept, that the Government have crafted some safeguards to meet the extensive concerns expressed across the Benches of this House in Committee and by many concerned interests outside Parliament, most notably the social work profession itself and the major children's charities.

The Government's amendments include one of my proposals, for which I am grateful—namely the establishment of an independent panel to consider particular proposals. Ultimately, however, after reflecting further on this issue following a pretty lengthy meeting with Edward Timpson, many of his officials and people from local government, I think that these clauses remain fundamentally flawed, even with the proposed safeguards, for three main reasons.

First, the examples that the Government have cited in support of the clauses do not justify the kind of draconian powers that the Secretary of State has sought. All the examples I have heard about are relatively minor changes which may or may not improve effectiveness and efficiency. The Government have simply not shown why such wide powers are needed, or the scale of innovation that cannot be attempted because of primary legislation. We simply do not have the evidence base to show that there are a lot of hungry people out there wanting to innovate who are frustrated by primary legislation. In any case, if the Government thought that the changes they have cited were necessary and needed primary legislation, they could, and should, have used this Bill to make them, and subjected their ideas to parliamentary scrutiny. There was nothing to stop them including those proposals in the Bill and explaining why they needed to introduce changes and why children's services would be improved. However, the Government have chosen not to do so. Instead, they have chosen an extremely large sledgehammer to crack quite small nuts, which has only caused many people to wonder what the Government are really up to. The Government's failure to consult properly on this Bill in advance has only fuelled that suspicion.

Secondly, the Government have singularly failed to convince all the major children's charities, Liberty and the majority of social workers that what they are proposing in Clauses 29 to 33, even with the proposed safeguards, will benefit outcomes for vulnerable children. The charities, along with the professional interests, simply do not consider that the Government have made the case for Parliament to open the door to remove long-standing protective rights granted by Parliament to safeguard highly vulnerable children. They are right to warn us to draw back from granting these wide powers to the Government, even with the proposed safeguards, without much more convincing evidence. As the charities said in the briefing to us, the Government should go back to the drawing board on innovation and conduct a proper review of what is needed in consultation with the various interests. It is striking that all the briefing we have received shows that these bodies have an appetite for innovation. They are not being Luddites about innovation and reform. They are saying that the process which the Government have adopted is totally inappropriate if we want to safeguard rights-based children's protection services.

Finally, the noble Lord, Lord Ramsbotham, referred to an argument which is currently being given a good airing over the triggering of Article 50. The argument is that when Parliament puts legislation in place, Parliament should amend it and not allow a Secretary of State to take wide powers to amend what he thinks fit. That is a particularly important consideration when the rights of vulnerable children are involved. For those reasons, if the noble Lord, Lord Ramsbotham, chooses to test the opinion of the House, I will vote with him.

*4.45 pm*

**Lord Low of Dalston (CB):** My Lords, I will speak briefly in support of the noble Lord, Lord Ramsbotham, who has covered the ground with his usual thoroughness and eloquence. These clauses, which we do not think should stand part of the Bill, stem from the Government's mission to shrink—or in this case substantially dismantle—the institutions of the state on a grand scale. The two areas which led the way in the state's assumption of the role of social protection in the 20th century were pensions, followed closely by social services for children provided by local authorities.

It was the brutal murder, in 1944, of 13 year-old Dennis O'Neill by his foster parents, and the consequent outcry, which persuaded society that it needed to be more proactive in protecting the welfare of children and led to a duty being placed on local authorities in the Children Act 1948 to protect children and, in appropriate circumstances, take them into their care. The public inquiry into his death found that the foster family had been selected without adequate inquiry being made as to their suitability and that there had been a serious lack of supervision by the local authority. It found that the local authority had failed to act on warnings it had received and that there had been poor record-keeping, a failure to work with other agencies, a lack of adequate resources and so on. These same failings have characterised subsequent inquiries, such as those concerning Maria Colwell, Jasmine Beckford, Peter Connelly—baby P—Victoria Climbié and a host more. The failures to which these inquiries have drawn attention are routine things, but they are vital. It is important to note that they are just the sorts of things that councils could be exempted from having to do by Clause 29 of the Bill.

All the reports into the scandals attending the cases I have mentioned, down to the latest one by the noble Lord, Lord Laming, point to poor communication between agencies as a significant contributory factor, but that is just what the local authority duty exists to promote. In all the cases I have been referring to the default is that of the local authority, but surely that is a reason for more prescription and regulation, not less. Clause 29 does not just permit the Secretary of State to exempt councils from overprescriptive and bureaucratic regulation. For example, it would permit her to exempt a council from having a duty to safeguard and protect children in need, under Section 17 of the Children Act 1989; to undertake an investigation where the authority suspects a child in its area is suffering significant harm, under Section 47 of the 1989 Act; to accommodate a child in its area who is lost or abandoned, under Section 20 of the 1989 Act; and to provide essential welfare support for a disabled child, under Section 2 of the Chronically Sick and Disabled Persons Act 1970.

What is the need for these provisions if the object is to enable local authorities to test different ways of working with a view to achieving better outcomes under children's social care legislation or achieving the same outcomes more efficiently? It is perfectly possible to test different ways of working, as earlier speakers have noted, within the existing legislative framework. If it is sought to test out different ways of fulfilling a duty, it makes no sense to get rid of the duty. The only circumstances in which it would make sense would be if it were intended to give the duty to someone else—in other words, privatisation, or dismantling of the state, as I said. That is what this is all about.

In the last six years, the Government have substantially emasculated local authorities by cutting at least 40% of their funding, so that they are increasingly able to do little more than what they are statutorily obliged to do. Now, it is evidently proposed to complete the process by getting rid of the statutory obligations themselves. I do not think that we should go any further down this track.

**Baroness Pinnock (LD):** I, too, rise to speak to this group of amendments, and in particular to Amendment 57, in the names of the noble Lord, Lord Ramsbotham, and those who have just spoken.

We on this side totally support the principle of innovation, and I think all other speakers have agreed that that is a positive thing to do. However, there is a need to retain the hard-won safeguards for very vulnerable children that are currently enshrined in primary legislation. In Grand Committee I said that this led to a dilemma: innovation, which may well improve the lot of these vulnerable children, or retaining the safeguards. I asked the Minister for assurances on that process, and about what was off-limits. His response was that there were "no limits" to what could be required from this innovation procedure. That is the very heart of my concern. Despite the additional safeguards which the Minister has attached to the Bill, there is at its heart an opportunity to throw away hard-won safeguards for the sake of the so-called principle of innovation, which may or may not help these vulnerable children.

I am pleased to see that through Amendment 54, the Minister inserts a new paragraph to prevent profit-making from children's services. That is welcome and I support it, but other explicit safeguards he has added go no way towards giving us the assurances we have all sought throughout the Bill's passage. Nor has it reassured the children's charities which have written to many noble Lords with their concerns. I will quote from part of their briefing, because it sums up the nature of the concerns we are all expressing:

> "Clause 29 seeks to introduce a wide ranging power. It leaves all children's social care legislation, regulation and guidance open to exemption or modification. This will include safeguarding legislation, support for vulnerable children, and oversight and monitoring of children at risk and in care. Children's entitlement to support or protection should not be removed without rigorous evidence and oversight … We welcome the Government's decision to bring forward amendments to improve safeguards to the 'power to test new ways of working'. Despite this progress, oversight and review mechanisms are not yet sufficiently robust".

That perfectly sums up what many of us have been saying. We are not convinced that what the Government have brought forward will provide reassurance that children, including the most vulnerable children in our society, will not be put at risk by Clause 29.

For those reasons, I, too, and other Members on this Bench, will support the noble Lord, Lord Ramsbotham, if he seeks the opinion of the House.

**Baroness Eaton (Con):** My Lords, in response to Amendments 57, 58 and 64, in the names of the noble Lords, Lord Ramsbotham, Lord Watson and Lord Warner, I wish to speak in support of Clauses 29 to 31. These clauses introduce a new power allowing local authorities to apply for exemptions or modifications to children's social care legislation, to enable them to test new ways of working. They also limit the duration of the period over which an exemption or modification will allow an innovation to be tested, and specify the consultation requirements that must be met.

I draw noble Lords' attention to my entry in the register of interests, which shows that I am currently serving as a vice-president of the Local Government Association. I would also ask you to note the LGA's support for these powers, particularly in light of the additional safeguards introduced by the Government through their Amendments 59 and 61. The LGA has concerns about Clause 32, however.

I do not believe Clauses 29 to 31 are signs of a Government recklessly putting our most vulnerable children out on a limb. Rather, they reveal a reforming courage, a willingness to address long-standing inflexibilities that substitute true safeguarding with bureaucratic formality. These clauses and the Government's amendments—which further tighten them in response to noble Lords' concerns—are very welcome.

Indeed, SOLACE, the Society of Local Authority Chief Executives, has argued for some time that the inflexible regulation and inspection regimes applied to children's social care provide little opportunity for innovation. My own 30 years of experience in local government—many of which were spent at the coalface of the issues at the heart of the Bill—have convinced me, too, that this power is needed.

[Baroness Eaton]

I was chairman of the Local Government Association at the time of the tragic death of baby Peter. Most of our practices surrounding child protection have been based on times when things have gone wrong. The clauses before us today enable us to build on when things are done right. Every day, children's services departments across the country face a barrage of complex challenges: rising demand, reduced funding, greater awareness of child sexual exploitation, gang activity and radicalisation, as well as a significant increase in the number of unaccompanied child refugees.

Freedom to test new ways of working in such a context is not only welcome but desperately needed. The paramountcy principle enshrined in the Children Act 1989 still stands. Indeed, the best interests of the child are far more likely to be served if overregulation is not allowed to get in the way of good social work practice. Professor Eileen Munro says that the power to innovate is a critical part of the journey set out in her independent review of child protection, towards a welfare system that reflects the complexity and diversity of children's needs. The culture change she called for in her groundbreaking report, commissioned by the coalition Government, will simply never come to pass without testing innovation in a controlled way to establish the consequences of change before any national rollout. She describes it as,

"a sensible and proportionate way forward".

Anthony Douglas CBE, who is the chief executive of Cafcass, agrees that the proposed new power will help,

"strip back bureaucracy to a safe minimum level",

preserving the professional time of social workers and social care staff for the delivery of,

"services and programmes that make a positive difference to children and families".

Steve Crocker, Director of Children's Services for Hampshire County Council, one of the Department for Education's partner in practice authorities, is keen to apply the power by deploying the independent reviewing officer's role in a much more targeted way. Currently, IROs' highly skilled professionals are legally obliged to attend some reviews where, frankly, they are neither wanted nor needed by the young people they are there to serve. Children and young people who are in happy and stable arrangements would rather their review was attended wholly by people they are familiar with. At the same time, there are cases when IROs' time would be far better spent providing more scrutiny and oversight.

*5 pm*

Similarly, North Yorkshire County Council, another partner in practice authority, which has a proven track record in delivering good children's services, wants to trial freedoms around family and friend carers—carers who are currently squeezed into a fostering assessment regime tailored to the long-term fostering workforce. Such kinship carers may only ever want to take on a single child or sibling group, but they are forced to go through training and procedures intended for a very different purpose.

In conclusion, I sincerely applaud noble Lords' respect for the legislative framework that is the bedrock of children's social care services and protects the rights of children and young people, who are at the forefront of their concerns. However, there has to be some carefully controlled leeway. If automatic process is hampering authorities' ability to tailor their services to the individual child's needs and wishes and preventing the testing of potentially transformational practice before permanent and widespread rollout, many in the vulnerable care population could be living in the land of wasted opportunity.

**The Earl of Listowel:** The noble Baroness makes an eloquent and persuasive case for what the Government are proposing. I only wish that voices like hers were made available to those who will be affected by this legislation at an early stage so that they can digest and reflect and think that possibly the Government might have some reason for this proposal. Very sadly, the paper that introduced this notion came out when this Bill was in Committee in July, so there has been no consultation among the middle workforce. We hear that only one-tenth of social workers supports this clause. Barnardo's, Action for Children, the NSPCC, the National Children's Bureau and Mencap are all strongly concerned and are against Clause 29.

Listening to this debate, I thought about the experience of children taken into care—children whose voices were very often not heard by their families. Their interests and concerns were not listened to by their families, and I feel that the process followed in this arrangement leaves social workers and those working with these children very much in the same position: we risk leaving them feeling that their voices and concerns have not been heard because of the very unsatisfactory way in which this provision has been introduced. I have some sympathy for what is being presented and some understanding of the risk of too much regulation, following one crisis after another. But I am afraid that the way in which this has been introduced simply risks demoralising all those who work on the front line.

I support my noble friend's Amendment 57, but I am grateful to the Minister for the helpful briefings arranged on this clause and encouraged to learn from his recent letter that he has established a consultative group of practitioners and this new panel, and that in the implementation the Children in Care Council will be consulted. As I say, the first rationale that I am aware was publicly provided for this controversial measure was in the document published during Committee in the summer. The Government have been very slow in bringing forward credible examples of how the clause will be used and how it is necessary. The noble Baroness was very helpful in what she said, in being specific about the changes, but this is very late in the day. Much as I respect the clause's advocates, I have not found one social worker or child psychotherapist or one provider of children's services in the several organisations that I am associated with who supports this. It would be helpful if there could be a proper consultation. To achieve the Government's vision of social care reform, surely they must bring at least a critical mass of social workers and social care professionals with them. I implore the Minister to take this clause back to the sector, to consult and collaborate with it, and to produce something that we can all get behind.

Recently we have been concerned about Brexit and whether the Government—the Executive—would consult the legislature—Parliament—about its implementation. I ask Members of your Lordships' House and the other place how they would feel if the senior authority sought to push through something which would affect them so much without consulting them first. I am afraid that this is exactly how many of those working practically in the field feel. That is why there is this depth of concern about these proposals.

**Lord True (Con):** My Lords, I regret that I was unable to attend Grand Committee because of certain personal problems and trying to do my day job, in which I declare an interest, of running a local social services authority. It is an innovative authority, achieving for children, which was established by the London Borough of Richmond, in common with the then Liberal Democrat Royal Borough of Kingston, as a community interest company to enable high-quality social work to be done locally and to help others. I recall that when it was proposed everyone said it was a dangerous experiment and should not be tried and that it would lead to all kinds of dangers. However, we have found that care in Kingston has been transformed and our senior social workers have been able successfully to give advice to other authorities such as Sunderland, Wandsworth and others. We should not fear innovation.

As many have recognised, the background to this proposal is, as the Munro report said, that there is a risk of too much rigidity, overregulation and stifling the good for the always important sake of protecting the vulnerable. However, having listened to the debate, I find that some remarks were astonishingly apocalyptic. It is nonsense for the noble Lord on the Front Bench opposite—or indeed, with all due respect, for the noble Lord, Lord Low of Dalston—to talk about privatisation in the context of a debate in which the Government have tabled amendments to say that profit will be ruled out. The noble Lord, Lord Watson, may know of private sector operators who are keen to operate on a loss-making basis, but I have yet to meet one. The talk of privatisation is reckless. It spreads disturbance where it need not be spread and is not germane to the point before us.

Everyone, from every Bench, including the noble Lord, Lord Ramsbotham, has said that they like innovation. The noble Lord likes to see change and things being done differently in the Army. The tenor of the debate has been, "We would like innovation but we cannot allow it because it is too risky". If the Army had operated on those principles it would still be advancing in close order, line abreast, in red coats.

What is before us is not wholescale radical change but a limited power for social workers to innovate, to try to do a better job for the people they want to serve. It is disappointing. I have spoken often in this House, with Members on other Benches, and I feel that professionals in local authorities are not trusted enough. It is a constant theme of the speeches I make in your Lordships' House. Sometimes I feel like a lone voice on the Benches behind the Government, I have to say. But here is a small, limited proposal that asks us in Parliament to trust local authorities and the advice of professionals who wish to innovate.

Many of the speeches have been made as if the amendments put forward by my noble friend on the Front Bench had never been tabled. Here is a man who I have heard rightly praised, on every piece of legislation we have had concerning children, for his capacity to listen and make changes with deep sensitivity to the concerns and interests of children. He has come forward with proposals answering your Lordships' concerns, many of which have been expressed legitimately, and it is proposed that they be rejected out of hand. I see the noble Lord, Lord Low, rising. I will of course hear what he says.

**Lord Low of Dalston:** What is there to prevent local authorities and social workers innovating under the present legislative framework?

**Lord True:** My Lords, certain things can be done differently, but this proposition will allow a range of proposals to be put forward, some of which have been mentioned already by my noble friend Lady Eaton. No doubt others will be suggested. The point is that we must allow professional social workers to make propositions.

On what is here before us the cry is, "No consultation". This process requires local consultation and evidence on how better outcomes will come about from the experiment that might be allowed. It requires proof of local capability and quality, assessment of the potential risks to children, monitoring, evaluation and an evidence base before it even gets to the panel that is proposed to consider whether we might have an experiment. Then the panel will consider the experiment, then your Lordships will have the right to vote on whether that experiment should take place. The idea that Parliament would be taken out of the matter is nonsense. Parliament is at the heart of the matter in the legislation put forward.

This is one of those days where, carried by the deep love and affection this House has for the vulnerable and disadvantaged, which I share—it is why it is my passion to be in local government—your Lordships risk throwing a very small baby out with some bathwater that does not exist. We have a Catch-22 situation before us: the legislation potentially enables high-performing local authorities, taking ideas put forward by professional social workers, to try limited experiments in a safe, controlled environment. If your Lordships say that prior experiment is too dangerous and throw it out, the only alternative, as the noble Lord, Lord Watson, has said, is to have wholesale legislation without any prior experiment: let us test it and see when it has got through Parliament. That might be rather more dangerous.

I hope that on reflection the House, while in no way resiling from the deep concerns expressed, will listen to my noble friend on the Front Bench. I hope that they will read what is in the amendments and not reject them, as doing so would excise the capacity for limited innovation by good social workers from the practice of care in this land.

*5.15 pm*

**Baroness Howarth of Breckland:** My Lords, I do not have a prepared speech. I came today to listen to the arguments, because this issue is difficult and finely

[Baroness Howarth of Breckland]
balanced. I think that the Government have come a long way and listened extraordinarily carefully over the summer. I was able to come in during my holiday, to be seen and listened to by officials and to have my hopes and fears for social work heard. I think that a lot of that was taken on board.

I agree with the noble Lord, Lord True. I do not agree with the noble Lord, Lord Low, that this is a way to dismantle the whole legal system for children. Having been a director of social services who was involved in not one or two but three child abuse inquiries and who has experienced some of the most difficult areas of social work down the years, I am concerned—I have talked to colleagues about this—that we have such a mass of guidance and procedures to follow through the present legislation that, without some intervention, social workers and their managers will be overwhelmed. I am sure that the noble Lord, Lord Warner, would agree with that. I say to the noble Lord, Lord True, that it is likely to be social work managers and not social workers who are looking for innovation, but let us hope that they will be informed by the social workers, who in turn will be informed by those whom they listen to and try to help—in this case, children.

I say to the Minister, for whom I have huge respect, that he has simply not won the hearts and minds of the vast number of people out there in the community. We have letters from mothers who are totally confused and seem to think that this has something to do with being able to cut across the whole of law so that their children may be taken away—I have sent the letters to the Minister so that he might see them. I do not think that it has anything to do with that, but it shows the breadth of confusion.

I have talked to people who want to innovate. I co-chair the All-Party Parliamentary Group for Children and have listened to directors of children's services—good directors—who are in difficulty and who would like to make changes. There are difficulties. For example, if you are caught in the common assessment framework, you can spend your life assessing situations and never getting into the position of providing a service—and there are legal requirements about assessment. I give just that one example; as a practitioner, I could give a number of examples of cases where easing the regulation would make it much better in terms of providing and delivering services.

The question that I am still stuck with today in not knowing which way I would want to vote is whether the Government have done enough to reassure us that the structures are strong enough to ensure the safeguarding of children's services, the development of social services and the long-term protection of children. The Government have not convinced most stakeholders in the community. Whether there is more that the Government could do to reach those hearts and minds, whether the noble Lord, Lord Ramsbotham, will press his amendment at this point and we will therefore find ourselves unable to move forward on innovation—which would be a pity, because there are things that need to be done and changes to be made—and whether this was the best way to do it or whether an inquiry into and review of guidance and the law would have been better I do not know. We are where we are. Many of us do not want to see the stifling of innovation; we just want to make sure that it is safe.

**Lord Farmer (Con):** My Lords, I follow my noble friends Lady Eaton and Lord True in supporting Clauses 29 to 31. My noble friends made many of the points that I thought were important to this debate, so I shall limit myself to the single issue of testing and reiterate the commendation of the Government for their reforming courage, not just in what they are seeking to achieve but in how they are seeking to achieve it.

Few can doubt that reform is needed in national social work practice. The number of children coming into care is soaring. My noble friend Lady Eaton has already mentioned how the complexity of their lives, especially when they are late entrants into the care system, cannot be adequately catered for in the current legislative framework.

Every sheet of Pugin wallpaper on the walls of this Palace could be replaced by policy reports brimming with ideas and care studies about social work and children's services reform. Many of these ideas have been learned from good practice here and in other countries; they emerged not from a clear blue sky but from grass-roots practice. However, if they are ever to be implemented, they need the leeway referred to by my noble friend. On the subject of learning, modern government increasingly has to draw inspiration from the way corporations innovate but avoid going bust in a highly complex world—without, of course, handing over the core business of protecting the vulnerable to profit-making companies. I welcome the Government's amendments to Clause 29 that bar local authorities from doing precisely that.

To explain what I mean with a recent example, the Institute for Government published Nicholas Timmins's highly instructive report on the rollout of universal credit, at the heart of which was a change in approach from the traditional way of managing big projects. Previously, managers operated a "waterfall" approach, where government would legislate on a programme and set the rules, suppliers would then design in detail how these would operate, do some testing and then cascade a finished system out to the regions, either in phases or even on one day. One of the major drawbacks was that any errors, misjudgments or even rigidities factored in early or midway through the design process tended to be, as Timmins said, "baked in", and end users could find that the project did not meet their needs because requirements were wrongly specified or simply not anticipated early on.

The opposite—which the private sector has increasingly adopted over the last 15 years or so—was known as the "agile" approach. Again to quote Timmins, this is,

> "a mindset of humility around how little you should expect to understand about how real people use your service. So you optimise your whole approach by working with them and learning to iterate quickly based on learning in the real world".

The mantra of test and learn that emerged from the adoption of an agile approach became a welcome hallmark of wider welfare reform, as well as of universal credit. It is a far more realistic and sensitive way to carry out reforms in areas such as welfare benefits and social care, which have such profound implications for people's quality of life, well-being and even survival.

Obviously, there are many differences between the rollout of an IT-controlled benefits system and an iterative improvement in the responsiveness of children's services, but the key similarities lie in the words "iterative" and "responsive". We heard from my noble friend Lord True about the Royal Borough of Kingston and the London Borough of Richmond—Partners in Practice local authorities. They have said that the clauses will enable them to safely test new approaches that their front-line workers come up with and remove barriers to effective work. Leeds City Council is seeking to become an exemplar of a new and more sustainable safeguarding system where children do better, families are supported to do better and the state has to intervene less. One local authority after another is aspiring to become a learning organisation that can be instructed by and instruct others—all within an enabling framework of intense scrutiny from government and those charged to put children at the forefront of all they do.

We are all here with the aim of ensuring that children thrive. But, as anyone who has lived in a family with several children knows, parenting must be nimble if each unique child is to flourish. I suggest that we also need to be agile in how we approach these clauses. We should no longer fetter well-trained professionals but enable them to develop strategies for their patch within the protective envelope of the Bill.

**Baroness Lister of Burtersett (Lab):** My Lords, I will briefly take up a couple of points made by the noble Lord, Lord True. He said—I may be slightly misquoting him—that we should allow professional social workers to take proper decisions. But is it not telling that, as we heard, only one in 10 social workers in a survey supports the Government's proposals, and more than two-thirds of them believe that letting local authorities exempt themselves from children's social care legislation will lead to more children being placed at risk?

The other point made by the noble Lord was that Parliament will be at the heart of the process, but that will only be in so far as we are allowed to debate the regulations. We all know that we have no power when it comes to regulations, and that if we try to use what powers we have we get lambasted for overstepping them. It is not fair to say that Parliament will be at the heart of this process, whereas it would be if there were proper, primary legislation.

**Lord Mackay of Clashfern (Con):** I listened to this debate in Grand Committee in considerable detail and I certainly have a vested interest in securing our social work and the Children's Act statutory provisions. I think that the provision made in the Bill is misunderstood in some quarters. As I listened to the debate today and on the last occasion, I formed a view that some of those contributing may not have fully understood the purpose of this provision. It is not about allowing local authorities to innovate at their whim; what it does is to ask local authorities that if they have an innovation that they think will improve the lot of children, and they find that that innovation is inhibited or prohibited by some statutory regulation or provision, they should be able to ask the Secretary of State to use the powers—which are strictly limited by the amendments that have been put in—to authorise that amendment for a limited time.

The noble Baroness, Lady Pinnock, quoted what my noble friend the Minister said in Grand Committee about there being no limit to this. Of course, it depends what you are looking for. There is a terrific limit to it but it has to be for the benefit of the children. It is not limited in the sense that it may be about a statute or a statutory regulation, or indeed some form of guidance issued by the department, but it is very limited by the necessity to demonstrate that you want to improve. The noble Lord, Lord Low, for whom I have the greatest possible respect, asked what prevents innovation as it is. There is nothing to prevent innovation except that some innovations which you may want to make run counter to a statute or statutory provision. If you are faced with that, you cannot make that innovation unless there is some way of dealing with the statutory prohibition. That is what the Bill intends to do. Having listened to the debate in the summer, I suggested to the Bill team that there might be a slightly better way of framing this to make it a little plainer that that is exactly what it does, but that has not happened—as yet, anyway.

Much of the difficulty for social workers is that there are sometimes a lot of misunderstandings and misrepresentations over what this is about. It is not about destroying the system. I would certainly not support it for a minute if it was. It is to improve the way that the system works and, where you find something in it that constrains you not to do it in the best possible way, you would have a way of dealing with that.

**Lord O'Shaughnessy (Con):** My Lords, I rise to speak in favour of the power to test new ways of working and am therefore against those amendments which seek to remove the relevant clauses from the Bill. In doing so, I strongly associate myself with the comments of my noble friends. I have reflected carefully on the arguments made by the proposers of these amendments and I know that they are motivated by the best wishes for very vulnerable children. I take their warnings seriously. Noble Lords may know of my own involvement in running schools, so I am deeply aware that the duty of safeguarding young people and children lies heavily on the shoulders of those who look after them. Our first responsibility is to keep children safe; even more so when the home life of a child does not offer sanctuary. It is right to move cautiously before we put any of this at risk.

*5.30 pm*

Having acknowledged the great duty of care faced by social workers and others who work with children, it seems to me that attempts to remove the power to innovate from the Bill are a mistake. Progress relies on the process of discovering new and better ways of doing things to maximise welfare. Our unique human capacity is to apply our ingenuity, our creative spark and our entrepreneurial spirit to solve problems that we face as a society. It is simply not the case that all solutions are already out there and that if only we could find them and spread them more evenly, the problems would be solved. Rather, progress relies on using the individual's imagination, harnessed to prior professional knowledge, to create innovative solutions which can be found to be effective or otherwise only through implementation and evaluation.

[LORD O'SHAUGHNESSY]

This kind of approach, which my noble friend Lord Farmer described so elegantly as "agile", is increasingly used within the public sector to tackle some of our greatest challenges. Housing associations have created solutions to housing need that councils never did. Sponsored academies allow charities to try new approaches to education in areas of chronic underperformance. We now have innovation funds in the DWP, and in the criminal justice system we have pilot schemes for tackling recidivism. They all faced opposition, yet much good has been done as a result of them.

Without successful interventions, the vulnerable children who are the subject of the Bill face dreadful life outcomes. What group could be more in need of innovation given the deeply complex web of challenges that they face? We need new thinking, harnessing the ingenuity and creativity of social workers and others, to make sure that vulnerable children have a better chance of a better life. On that basis, I strongly urge noble Lords to make sure that the power to innovate and test new ways of working stays in the Bill so that it can play a central role in the policies of this Government and future Governments, in order to give vulnerable young people a greater chance to flourish in life.

**Lord Nash:** My Lords, I thank all noble Lords who have contributed to this debate. I found it very depressing. Frankly, many noble Lords seemed to be depressingly suspicious of our motives. This is all about improving care for children at the front line. Nobody who has worked closely with my ministerial colleague Mr Timpson could possibly doubt that. He literally has care for children in his DNA, his late mother having fostered more than 80 children and adopted several, and his having worked as a professional in this field for many years. I am extremely grateful to my noble friends Lady Eatwell and Lord True, who are hugely knowledgeable on the inner workings of local authorities in this area, and to my noble friends Lord Farmer and Lord O'Shaughnessy and my noble and learned friend Lord Mackay, for their support.

The noble Lords, Lord Watson and Lord Low, asked for examples of why this power is necessary. The noble Baroness, Lady Howarth, mentioned three examples. We have discussed this at length before. Local authorities, including the very best, tell us that this power will provide them with opportunities to innovate which are simply not available under current legislation. Of course, some local authorities provide very good services under the current legislative framework, but children deserve the very best services, not the best within the current constraints of the good but not perfect legislative framework.

During the course of this debate, I have reflected on a number of points that have been made. The noble Baroness, Lady Howarth, talked about a lot of misinformation in the system and a lot of suspicion, which may affect some noble Lords' suspicion. It is our job as lawmakers to see through suspicion and see the arguments for what they truly are, and it is the Government's job to clarify the position with stakeholders. I commit to doing everything we can to explain more fully what this is about, because it is clear that we need to do more in that regard.

I have also reflected on something that my noble friend Lady Eaton and the noble Lord, Lord Low, said. I have huge respect for the noble Lord and I was struck by how suspicious he was of our motives in this regard. I have thought about this in relation to Clause 32. Without Clause 32, it would be impossible to say that this is about dismantling local authorities because these provisions can be initiated only by local authorities. Clause 32 was intended to be a technical clause to clarify that whoever is discharging the local authority's functions, whether it is a trust or the Secretary of State, has the ability to use the power to test different ways of working. As I have said previously, we anticipate working with our strongest local authorities in the first instance, rather than intervention authorities, and there was never any immediate policy intent for the power to be used in this way; nor was the intention to cut local partners out of decision-making. However, I understand that this point may have caused unnecessary concern to noble Lords. It is critical that local government should feel it owns these clauses. If the provisions in Clause 32 are a block to that, I am very happy to reconsider the point completely. I think that would remove the fear expressed by the noble Lord, Lord Low: there could be no question of a dark agenda on the part of the Government to dismantle local authorities, because only they would have the power to initiate these clauses. I hope this will go some considerable way towards reassuring noble Lords who have concerns on this point.

I will address some other points, particularly the amendments on the process of scrutinising applications. I start with the amendment in the names of the noble Lords, Lord Warner and Lord Watson. As I have said, we have listened to noble Lords on this point and tabled a government amendment to introduce an expert advisory panel to scrutinise applications to use the power, and publish its advice. I believe we have gone a long way towards satisfying noble Lords' concerns in this area.

Amendments 62 and 65, tabled by the noble Lords, Lord Watson and Lord Hunt, are on the Children's Improvement Board. I entirely understand the intent behind these amendments, and the noble Lords are right that local government has a very important part to play in scrutinising applications. We propose that this be done through the Children's Improvement Board feeding in views to a local government representative on the expert advisory panel, which I have already referred to. My officials will work with the LGA and others to work out the details of this process, but I think that would be preferable to naming an informal grouping in the Bill. The grouping could change its constitution or its name at any stage and therefore render itself unable to be consulted. I do not think that would be the right way forward.

Turning to the amendments that address the principle of these clauses, the noble Lord, Lord Ramsbotham, referred to organisations which object to the power. However, it is overwhelmingly the organisations on the front line, and those that represent them, which support these clauses and agree with the Government that overregulation can get in the way of innovation. The LGA has said that it strongly supports the principle of allowing councils to shape provision around the

needs of children and young people, rather than the constraints of inflexible regulation. Similarly, the Society of Local Authority Chief Executives has said that the tight regulation and inspection regimes applied to children's social care provide little opportunity for innovation, and that the proposed power to innovate will enable local councils to try different approaches with appropriate safeguards.

Our partners in practice, 11 of the best and most innovative local authorities from across the country, support this. For instance, Leeds City Council has said that it wants to work in partnership with government to remove barriers that get in the way of best practice, and become an exemplar of a new and more sustainable safeguarding system in which children do better because families are supported to do more and the state has to intervene less. Professor Eileen Munro, whose ground-breaking review into child protection is at heart of our case for the power, supports these clauses. She has said of the power that it is,

"a critical part of the journey",

set out in her independent review and that,

"testing innovation in a controlled way to establish the consequences of the change, before any national roll out, is a sensible and proportionate way forward".

Anthony Douglas, chief executive of Cafcass, has described the power to innovate as a,

"crucial requirement if the mainstream social work and social care services of the future are to successfully manage demand, improve quality and provide value for money"'.

The National IRO Managers Partnership sees the opportunity given by the clauses to test new approaches, and has said that the clauses are,

"an opportunity to review practice and develop more innovative approaches and models of support across the whole system of children's services".

Finally, Chris Wright, chief executive of Catch22, a charity that is at the forefront of delivering innovative services, makes the case for the power well. He says:

"It will give power back to practitioners and professionals at the local level, supporting them to design programmes that work for the specific children in their care".

This illustrates that a very significant amount of support exists for the Government's case that regulation can get in the way of innovation, and that the approach we are taking of introducing a grass-roots power that allows local authorities to come forward with ideas, with careful safeguards, is the right one.

I understand the concerns expressed by noble Lords about delegated powers of this type and about whether the power is proportionate. I stress that this is absolutely not about Government bypassing Parliament on matters of legislation. It is about local authorities, Parliament and Ministers working in partnership to test new approaches and build the evidence for a better legislative framework for all children. Every use of the power will be rigorously scrutinised ahead of being debated, to ensure that it is truly in the best interests of children. Parliament will have the ultimate say on every use of the power.

The noble Lord, Lord Warner, made the point about using a sledgehammer to crack a nut. I suggest that in voting out this clause, noble Lords would be using a sledgehammer to deny the system the opportunity to test a very limited way of working with the aim of improving the lives of young people. The noble Lord asked for evidence, but it is not until we test ideas in practice—in a very limited way—that we can get that evidence, rather than just talking about a lot of theoretical ideas.

**Lord Warner:** I was making a slightly different point. Where is this groundswell of concern which accumulated in the DfE before it produced the legislation to suggest that this is necessary?

**Lord Nash:** I have already quoted a number of practitioners who have stated the need for it. As I have said, if we remove Clause 32—which I am quite prepared to look at doing—we will deal with many of the shadows that some noble Lords have raised.

The Government have listened and made substantial steps to put safeguards in place around the use of the power. The Children's Minister and I remain ready at any time to discuss these clauses further. Professor Eileen Munro talked about doing the right thing, rather than doing things right, and that is what this power is all about. If these clauses are removed, noble Lords would be denying local authorities that can see a better way of working for the benefit of the children in their care the opportunity to test the whole system and learn how we can do things better, giving those children the opportunity of a better life.

**Lord True:** Before my noble friend sits down, there is an important point. Is he saying that once the House has considered what he said and reflected on it, he would not oppose Amendment 66, which would leave out Clause 32, while on the other hand he would wish to keep the innovation clauses? That would, as he has said, leave all the innovation coming up from the professions and from local authorities, and remove the suspicion that the state might impose something.

**Lord Nash:** Yes.

**Lord Ramsbotham:** My Lords, I am very grateful to the Minister for the careful and considered summing up. I am particularly struck by the remark about Clause 32, which is all about the introduction of the Secretary of State. Before I go on, is the Minister seriously proposing that the Secretary of State should be removed from the process?

**Lord Nash:** No, I am not proposing that. I am proposing that where a local authority is no longer in charge of its own destiny, as it were, the Secretary of State cannot use the power herself.

*Amendment 54 agreed.*

*Amendments 55 and 56*

*Moved by* ***Lord Nash***

**55:** Clause 29, page 20, line 32, leave out subsections (6) and (7)

**56:** Clause 29, page 21, line 1, leave out subsection (9)

*Amendments 55 and 56 agreed.*

*5.45 pm*

*Amendment 57*

*Moved by* ***Lord Ramsbotham***

**57:** Clause 29, leave out Clause 29

**Lord Ramsbotham:** My Lords, I am very grateful to the Minister for the care with which he summed up and to all those who have taken part in what has been a very thoughtful debate. I am particularly grateful to the noble Baroness, Lady Eaton, and the noble Lords, Lord True and Lord Farmer, for giving us the benefit of their experience and taking a slightly different line.

The Minister said at the beginning that he was depressed about the attitude he had heard to making improvements. I have to say that I came into the Bill depressed, because there was clearly a great fixed gulf between the Government and the practitioners on the ground. That worried me, particularly as the Bill went on and more and more practitioners wrote to us about their concerns, in particular about these clauses. As I said at the start, I am totally in favour of innovation. I outlined the way in which the Army—I know the other services do the same—processed innovation by identifying it and turning good practice somewhere into common practice everywhere.

I am sorry to go back to my time as Chief Inspector of Prisons, but what worried me about good practice in prisons was that the prisons lacked a structure and a wherewithal for turning good practice into common practice. During my five and a half years as chief inspector, I identified 2,800 examples of good practice, only 40 of which were turned into common practice, because there was no machinery for doing the others. As I said, I am all in favour of innovation and of a bottom-up approach, but I am concerned that there appears to be no system in the Department for Education looking for innovation or improvements and then processing them. If necessary, and if legislation is the reason why they cannot be processed, then surely the initiation of a machinery which can get round that should be investigated.

As I said at the beginning, what concerned me about this was that the Secretary of State was being empowered to take action which might undo the law laid down for social work and therefore affect the rule of law. I do not believe that that machinery has been properly worked out in the ministry, and if it has, it certainly has not got through to the workers on the ground whose understanding and support for legislation is absolutely crucial. I asked at the end of my speech whether the Minister would consider withdrawing these clauses and holding a proper consultation with the people working on the ground—who clearly have no confidence in the clauses in the Bill—out of which could come a machinery for innovation and for identifying initiatives and processing them, which would satisfy everyone and give confidence in the system. If people have confidence in the system, the outcomes will be better for children.

I have listened very carefully to all the arguments and, as I say, am extremely grateful to those who have taken part, particularly because both sides of the argument have been put very clearly. Now the time has come for a decision, and I wish to test the opinion of the House.

*5.49 pm*

*Division on Amendment 57*

*Contents 245; Not-Contents 213.*

*Amendment 57 agreed.*

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Trimble, L.
True, L.
Tugendhat, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Warsi, B.
Wasserman, L.
Waverley, V.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Willetts, L.
Williams of Trafford, B.
Wilson of Tillyorn, L.
Woolf, L.
Young of Cookham, L.
Younger of Leckie, V.

*6.04 pm*

### *Clause 30: Duration*

*Amendment 58*

*Moved by* ***Lord Ramsbotham***

**58:** Clause 30, leave out Clause 30

*Amendment 58 agreed.*

*Amendment 59 not moved.*

### *Clause 31: Consultation*

*Amendments 60 to 63 not moved.*

*Amendment 64*

*Moved by* ***Lord Ramsbotham***

**64:** Clause 31, leave out Clause 31

*Amendment 64 agreed.*

### *Clause 32: Interaction with law about Secretary of State intervening*

*Amendment 65 not moved.*

*Amendment 66*

*Moved by* ***Lord Ramsbotham***

**66:** Clause 32, leave out Clause 32

*Amendment 66 agreed.*

### *Clause 33: Interpretation of sections 29 to 32*

*Amendment 67 not moved.*

*Amendment 68*

*Moved by* ***Lord Ramsbotham***

**68:** Clause 33, leave out Clause 33

*Amendment 68 agreed.*

*Amendment 69*

*Moved by* ***Baroness Walmsley***

**69:** After Clause 33, insert the following new Clause—

"United Nations Convention on the Rights of the Child

(1) Public authorities must, when exercising any function relating to safeguarding and promoting the welfare of children, have due regard to the United Nations Convention on the Rights of the Child and its Optional Protocols.

(2) Any person whose functions are of a public nature must, in the exercise of any function relating to safeguarding and promoting the welfare of children, have due regard to the rights set out in the United Nations Convention on the Rights of the Child and its Optional Protocols.

(3) Public authorities must publish a report, in a format accessible to children, on the steps they have taken to meet the requirement under subsection (1), every five years.

(4) The references in this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force."

**Baroness Walmsley (LD):** My Lords, I move Amendment 69 and speak to Amendment 71 in this group. Amendment 71 arises from the third report of the JCHR for the current Session, and I am delighted that we are of one mind on the matter. Although there are some differences between them, both amendments are intended to do the same thing: to enshrine a duty on public bodies to have regard to the United Nations Convention on the Rights of the Child, to which the Government became a signatory 25 years ago.

Some might say that the obligation under the convention means that public bodies already have such a duty, but most people would also consider that the processes in place to ensure that the duty is carried out require improvement. One has to look only at successive reports from the Committee on the Rights of the Child when it scrutinises the Government's performance under the convention, including that of April this year, to see that there is still a lot to be desired. It concluded that the UK Government have failed so far to put effective law, policy and resources in place to protect and promote children's human rights.

Both amendments would require public authorities to determine the impact of decision-making on the rights of children and provide a framework for public service delivery in relation to children compatible with their convention rights. That is what "due regard" means. There are a couple of differences between the amendments, and I have added my name to Amendment 71 to indicate that, should the Government choose to accept it, I will gladly withdraw Amendment 69. Although Amendment 71 uses the wording of existing statute, which I have to say is probably better than mine, my amendment has the advantage of including a reporting duty to children on steps that a public authority has taken to implement the requirement every five years. This is similar to the Scottish Act. There is nothing like a reporting duty to put pressure on people to do something. Nobody wants to have to report that they have not done anything.

I thank Edward Timpson MP, the responsible Minister in another place, for meeting me and the noble and learned Lord, Lord Woolf, on several occasions to inform us what the Government are already doing to make children's lives better and to inform himself of our concerns. Those meetings are much appreciated, and we were pleased to hear about the improvements in the process, at least in the Department for Education, to promote awareness of children's rights and ensure that they are built into the policy-making process. However, we were disappointed to learn that the Government are reluctant to accept either of these amendments because they might increase bureaucracy, have unintended consequences and result in a tick-box mentality rather than a genuine way forward—that sounds familiar. If civil servants are inclined to use such an important duty simply as a tick-box exercise, I would encourage the Government to look very carefully at how they are trained and how their performance is monitored. Such a mentality should be stamped out, and quickly. On the contrary, I believe that such a duty will put the convention at the heart of policy-making—a first consideration, not a last-minute add-on—before a policy is finalised, which would be completely the wrong way to go about it.

We are also very disappointed that the further information which we were promised yesterday would be provided before this debate has not arrived. In the absence of that, we will therefore almost certainly have to return to this at Third Reading.

The Minister has asked us whether such a duty would really make a difference to children's lives. I would therefore pray in aid the public sector equality duty from the Equality Act 2010, which has had a real effect and, indeed, changed mindsets. As the JCHR records, the Equality and Human Rights Commission has provided evidence that a similar duty to the one we are suggesting now has already had positive results in Wales and Scotland, though the duties have not been in place for very long. Secondly, there is significant evidence from the experience of the public sector equality duty that an approach to promoting equality rights through the use of public duties to have "due regard" has led to substantive change. The response to the government review of the PSED in 2014 included a fairly comprehensive catalogue of positive outcomes which show us how effective it has been.

Public authorities have introduced systems to identify disadvantaged groups, enabling them to ensure better equality outcomes. Some tangible examples of these outcomes are: a better understanding of school exclusions; an increase in the provision of support for homeless women; and better fire-prevention processes for older people. These are just a few very practical results from the PSED. In addition, a culture of concern for equality issues has infiltrated public organisations. I would like to see a similar culture of concern infiltrate public organisations in relation to children's rights.

In December 2010 the Liberal Democrat Minister, Sarah Teather, on behalf of the Government, made a welcome commitment to give the UNCRC due consideration in the development of new policy and legislation. It seems to have taken six years to put in place some sort of system to ensure that, and the Minister in another place has now told us that he is keen to promote awareness of children's rights across government and has a framework to help him achieve it. However welcome that is, it falls short of the Children and Young People (Scotland) Act 2014 and the United Nations Convention on the Rights of the Child. Scottish Ministers must consider what steps they could take to secure the effect of UNCRC in Scotland, and if they identify such steps, they must take them. In other words, they must actually do something, not just promote awareness. That is what we are looking for in moving our amendment today. Awareness raising alone falls far short of the responsibility which we as signatories to the UNCRC have promised to shoulder. It is time that the Government accepted this and showed us some real action. I beg to move.

*6.15 pm*

**Lord Lester of Herne Hill (LD):** My Lords, I shall speak briefly in support of Amendment 71, which is also in the name of my noble friend, as well as Amendment 69. I prefer Amendment 71 because it is much better drafted, it is brief and it says the same thing in a way that even I can understand.

I shall be interested to know what the Minister says by way of reply, because she surely cannot say that she disagrees with the sentiment in Amendment 71. She surely cannot say that public authorities must in the exercise of their functions put the UN Convention on the Rights of the Child in the wastepaper basket. I do not think she can say that, not least because we are internationally bound as signatories to the convention that we ratified. She is not really in a position to say that we can forget about the convention altogether.

What can be said against the amendment? It might be said that, in some way, it is not necessary. However, I think that it is necessary because without the amendment, as a matter of law, a public authority does not have any obligation to have any regard to the convention. That is why I think it important that that power is now improved.

The Joint Committee on Human Rights, on which I no longer serve, has a mandate wide enough to look at compliance with the UN Convention on the Rights of the Child, even though it has not been made domestically effective. That parliamentary committee can report to both Houses on its views about the matter. It seems to me that if that is true of a parliamentary Joint Select Committee, how much more important is it that public authorities are asked to have regard to the international obligations to which we are party, and by which we are bound? That is why I will support Amendment 71, when we come to it. I see, for example, that the noble and learned Lord, Lord Woolf, is a party to it as well.

The amendment says what it does in a very easy and economical way. It uses the definition of public authority in the Human Rights Act—that is fine. It defines the convention briefly—that is fine. It simply says:

> "A public authority must, in the exercise of its functions relating to safeguarding and the welfare of children, have due regard to the United Nations Convention on the Rights of the Child".

I cannot see any argument against our approving it now as an amendment to the Bill.

**Lord Woolf (CB):** My Lords, I want to address Amendment 71, which has my name to it. Noble Lords may be surprised at my intervention in this debate on the Bill at such a late stage when I have perhaps been conspicuous in my absence from earlier stages. I should explain that it is because I am a member of the Joint Committee on Human Rights whose recommendation is that the Bill should contain such an amendment as Amendment 71 that I am making this submission.

The chairman of the Joint Committee, as your Lordships will know, is a Member of the other place and, of course, she cannot therefore speak in favour of the amendment. Noble Lords will have heard what was said by the noble Baroness, Lady Walmsley, and the noble Lord, Lord Lester, in the last few minutes. Quite frankly they have said everything that can be said in support of the amendment.

I also share the regret expressed by the noble Baroness, Lady Walmsley, about not getting the response we expected as a result of the meeting that took place yesterday when we were promised such a response. As noble Lords will appreciate, there are only limited circumstances in which we will be able to come back to this at a later stage. Like the noble Baroness, I regard this as not a mere technicality but a matter of great substance which would substantially improve the Bill if it were included. I suggest that it would be a very positive action if the Government were seen to embrace it. I had the advantage of hearing the debate which took place regarding the amendment in respect of Clause 29. The message which is received by those who peruse what happens is obviously extremely important. When we know that both Scotland and Wales have a provision of this sort, and that those parts of the United Kingdom have found it a benefit, it is very hard to understand why the Government should not welcome this amendment.

Noble Lords have heard about experiences with regard to some legislation. I know of experiences, for example, where a duty to improve the position of women offenders in prison has been taken with marked effect upon the approach which is now adopted. It is recognised that as a group of offenders, women need special consideration. The children we are concerned with in this debate need special consideration. When there is a UN convention which the Government have adhered to and see as a matter of international law which they should take into account, I would like to know why a different view is taken with regard to our domestic law.

To oppose the amendment gives quite the wrong message—not the message which the Government would like to give. When we had our meetings, we were looking for ways in which we could square the circle. My understanding was that the Government were looking at this matter and they were conscious that there could be virtues in the Scottish model. If they were to adopt the Scottish model, then I, for one, would regard that very sympathetically. But as matters stand, I seem to have no alternative but to say that it may be necessary to test the opinion of the House. I hope I can get the reassurance I need to make that unnecessary.

**Baroness Lister of Burtersett:** My Lords, I strongly support these amendments. The political commitment to give the UN Convention on the Rights of the Child due consideration in policy-making was very important and is welcome, but it is not enough, as the JCHR's report on the UK's compliance with the convention in the last Parliament clearly demonstrated.

I declare an interest as a former member of the JCHR, along with the noble Lord, Lord Lester. The duty does not apply, for example, to local authorities or other public authorities. The Government have said that they remain to be convinced that such a duty would make a real practical difference to children's lives and outcomes, rather than—as the noble Baroness, Lady Walmsley, noted—produce a so-called tick-box mentality and create bureaucracy, rather than change mindsets and culture. Yet Parliament's own committee, charged with safeguarding human rights, supports these amendments.

As we have the heard, the evidence from Scotland and Wales suggests that such a duty makes a real, practical difference. The criticisms made of this country by the UN Committee on the Rights of the Child suggests that what we have at present simply is not sufficient to safeguard children's rights. Can the Minister spell out what further evidence the Government need to convince them of the practical value of such a duty? What evidence do they have that it would produce box ticking, rather than cultural change? I fear that the current political commitment has not produced the cultural change that I agree we need. As the noble and learned Lord, Lord Woolf, has said, by opposing this very basic amendment, which is doing no more than putting a convention that we have signed up to into our legislation, the Government are sending out the totally wrong message in suggesting that they do not care about the rights of children sufficiently to ensure that they are safeguarded in law.

**The Earl of Listowel:** My Lords, I support this amendment. The Minister will be aware of the fantastic work done at Leeds, one of the leading children's services departments. It recently presented its work in Parliament and used the United Nations Convention on the Rights of the Child as the foundation of this achievement. It committed itself to all the children in the city in respecting and thinking about the UNCRC. It managed to reduce the numbers of children coming into care and give really good service for those children in care. I know of schools that use the UNCRC in a similar way—as a fundamental approach to what they do—and they have great successes, so I support this amendment.

I have a personal reflection, which may resonate with your Lordships. If we respect the rights of children and give them a secure upbringing, then when they are adults they are far less likely to be swayed by demagogues —I am thinking of today's election in the United States —and manipulated by people who dwell on their worst fears.

Finally, this would help to answer our problems about productivity in the workforce. If we respect children's need for family life, education and recovery from trauma, we will have adults who are not missing work because they are mentally ill or depressed; we will have a more productive workforce. There are many good reasons to support this amendment.

**Lord Ramsbotham:** My Lords, I remind the Minister that he used the word "depressed" in connection with our previous group on improvements. I have to admit that looking at the last committee report of the UN convention and comparing it with the previous committee report, I was depressed at how many in the previous one were still there in this present one. If you are looking for improvements, I suggest that you could start well with the two committee reports because they set out a very clear agenda for improvement.

**Lord Hope of Craighead (CB):** My Lords, I add a word on how this matter might be viewed in the courts. As many of your Lordships will know, I was a member of the UK Supreme Court; from time to time the UNCR convention was cited and we always paid close attention to what it said. It is plain from a number of our judgments that it did influence the way we approached cases involving children but, more importantly, there was a case called P-S Children in 2013 in the Court of Appeal in England, where it was said:

"The U.N. Convention on the Rights of the Child has not been made a part of English law but the duty of the court is nonetheless to have regard to it when considering matters relating to it".

In that case, the question was whether a child had a right to be heard in proceedings relating to him. There was no statutory right, but there was nothing to prevent it. However, the court—having regard to what the convention said—went on to say:

"It should now be declared that the child does have the … important but limited right, that is to say, a right to be heard in the proceedings".

That is just one example of the way in which the courts today are drawing upon the convention in developing their jurisprudence. It is also well established as a matter of fundamental law that when the United Kingdom has signed up to an international convention, it is to be presumed that this Parliament, when legislating, will legislate in accordance with what the convention provides. Therefore, if you find a provision relating to children, or the duties of authorities relating to children, the courts, if asked to do so, would interpret the legislation in the light of the convention.

We are in an imperfect world so far as England and Wales are concerned, but the courts are doing the best they can to follow the guidance of the convention and it would seem far better that England and Wales should follow the example of Scotland and legislate to put the matter beyond any doubt.

*6.30 pm*

**Baroness Wheeler:** My Lords, I again offer the support of these Benches for Amendments 69 and 71, the case for which has been comprehensively set out and argued today by the noble Baroness, Lady Walmsley, and other noble Lords, and in the debate in Committee. Like other noble Lords, I am grateful for the excellent briefings and guidance from the Children's Rights Alliance for England, the Equality and Human Rights Commission and the Joint Committee on Human Rights. All three bodies underlined the key opportunity presented by the Bill to promote the rights and well-being of children in care and care leavers by placing a statutory duty on public authorities to have due regard to the UN convention.

Like other noble Lords, I hope that the Minister has reflected on his assertion in Committee that a statutory UNCRC duty would not have any real impact on children's lives. He knows that the 2010 ministerial commitment to give due consideration to the CRC in all new legislation and policy has not led to the widespread change in mindset and culture across government departments that he acknowledges is vitally needed. Implementation of the Written Ministerial Statement has been both piecemeal and ad hoc, as we have heard.

The CRAE freedom of information discovery, and the single Department for Education example across government of any detailed analysis of the CRC and children's rights being undertaken—and then only on one Bill—show just how far away we are from children's rights routinely informing the development of law, policy and everyday practice nationally and locally. Indeed, the EHRC has pointed out that the DfE did not go into the level of detail that would have been expected had the statutory obligation been in force. For example, it did not look at the numbers of children affected or of those disproportionately affected, or provide a sufficient level of evidence to explain how conclusions on projected impacts had been reached. I look forward to hearing the Minister's view of the experience of embedding children's rights in law in Scotland and Wales, because there is strong evidence, as noble Lords have underlined, that the measures taken in both countries are starting to have the meaningful and practical effect he seeks.

Under Amendment 71, a children's rights framework would embed the CRC within children's services and public authorities working with children and families in England. Although many local authorities make reference to the CRC, few have an explicit child rights plan or strategy in place, and there is limited knowledge and understanding of the value of the child rights impact assessment as a key tool. A consistent approach to policy and practice is needed, using the CRC as a framework with nationally available guidance and support.

In a period of unprecedented cuts to public and local authority services, using the CRC to help safeguard children's rights and ensure a rights-based approach to services is more important than ever. The CRAE has emphasised that too many children continue to experience daily systematic violations of their rights. Just last week we saw Shelter's shocking report estimating that at least 121,000 homeless children in England, Scotland and Wales face Christmas in stopgap lodgings—the highest figure since 2007.

As the noble Lord, Lord Ramsbotham, underlined, this year's report from the UN Committee on the Rights of the Child expressed serious concern at the impact of the Government's recent fiscal policies and allocation of resources, and the disproportionate effect on disadvantaged children. I hope the Government will seize the opportunity presented by these amendments to address these very worrying concerns.

**Lord Nash:** My Lords, I am grateful to noble Lords for their amendments and for raising the important matter of the United Nations Convention on the Rights of the Child. This Government recognise the importance of the UNCRC and are fully committed to giving due consideration to the articles when making

[LORD NASH]
new policies and legislation. I also reassure noble Lords that one of the top priorities for this Government is the safety and well-being of children. In July, the Department for Education set out its vision of how reform of the children's social care system will bring about improved outcomes for all children, particularly the most vulnerable.

At a local and national level, listening to the voices of children when determining what policies to develop, how those polices should be implemented and what services should be developed, should be second nature to us. Indeed, the Children Act 1989 requires that the local authority shall give due consideration to the child or young person's wishes and feelings, having regard to their age and understanding, when taking decisions about them. We believe that the way to promote children's rights is for strong practitioners locally to listen to children and to act in ways which best meet their needs. A duty alone will not do that, and risks practitioners focusing on the wording of the legislation rather than on practice. The Government will consider how best to strengthen compliance with the convention in a way which promotes better practice and a culture of focusing on children's rights. In doing so, we will pay close attention to what is happening in Scotland and Wales.

Noble Lords will know that earlier this year in Geneva, the UK was commended for great strides made in legislation and in guidance to ensure that all children are protected from harm. Since the summer, the Government have reaffirmed their commitment to the UNCRC through a Written Ministerial Statement from the Minister for Vulnerable Children and Families. This reinforced our view that to achieve implementation of the UNCRC, every department across Westminster must be proactive in considering children's rights in policy-making. This was followed up with a letter from the DfE Permanent Secretary, Jonathan Slater, to his counterparts across government, challenging them and all their officials to keep the principles and conventions of the UNCRC at the centre of their policy-making and implementation, and to engage children and young people in the process. We are talking to the Children's Commissioner about how she might hold the Government to account in this respect. It is important that officials are equipped with the right knowledge and skills to make sure they can reflect children's rights within a policy framework, and we are looking at how to introduce a cross-Whitehall learning and development programme to help officials develop the best policies that take account of children's rights and work effectively for children.

Noble Lords who have tabled these amendments clearly have considerable expertise and experience in this area, and they raise a very important point about whether more can be done in England to ensure that children's rights are reflected adequately in our policy-making and implementation. I am grateful to noble Lords for tabling these amendments. I emphasise, however, that introducing new duties is not a step to be taken lightly. There are a number of additional steps we could consider, and we are keen to explore the benefits of the different potential approaches before deciding what further action might be taken. We therefore intend to revisit the significant action already taken to embed the UNCRC across Whitehall and beyond, and consider where there are opportunities to go further to better achieve the outcome we all want: for the rights of children to inform our policy thinking and service delivery.

**Lord Lester of Herne Hill:** Having heard the noble and learned Lord, Lord Hope of Craighead, does the Minister appreciate that there is a constitutional problem? The noble and learned Lord explained that even though the Convention on the Rights of the Child has not been made part of our law, the courts are still having regard to it and doing their best to comply with it. Would it not be much better if Parliament now turned that practice into something constitutionally even more respectable by making the convention part of our law, in the way that the Human Rights Act makes the European Convention on Human Rights part of our law?

**Lord Nash:** I heard what the noble and learned Lord, Lord Hope, said, and I will take that back and discuss it further, along with the point he made about the case to which he referred. I am happy to continue discussions with noble Lords who have contributed to this debate. I know that they have already had productive conversations in the past week with the Minister for Vulnerable Children and Families, although not as productive as they would have liked. I would expect those to continue. The DfE will look at all options open to us, but I regret that I cannot commit to a timetable, nor can I commit to returning to the issue before Third Reading. However, noble Lords should be reassured of our very firm intention to take further action. In view of this, I hope they will feel reassured enough to withdraw their amendments.

**Baroness Walmsley:** My Lords, I thank the Minister for his response. I thank my noble friend Lord Lester, the noble and learned Lord, Lord Woolf, the noble Baroness, Lady Lister, and the noble Earl, Lord Listowel, who, I am delighted to say, mentioned UNICEF's very effective Rights Respecting Schools programme. I wonder whether the noble and learned Lord, Lord Hope, agrees with me that if we had had the duty we are proposing in these amendments, perhaps fewer cases would have come to the Supreme Court for him to make a decision on.

We do not have full incorporation of the UN Convention on the Rights of the Child into UK law. This amendment falls far short of full incorporation. It is limited to functions relating to safeguarding and the welfare of children, and they would be enormously helpful as a first—not a last—consideration when setting policy in the specific areas that are in the scope of the Bill.

Nobody is suggesting that the duty to have due regard is a silver bullet. As the Minister said, we of course have to improve what practitioners do on the ground and the culture within which they work. I called in aid what has happened about the PSED: it has certainly had that effect in the area of equalities. The Government seem to be determined to consider everything else first, rather than put into UK law the rights that children have as a result of the fact that we are signatories to the convention. I do not quite understand it.

We have heard from the Minister this evening and the Minister in another place yesterday that consultations will take place across Whitehall. I asked Mr Timpson how long that would take and whether it could take place in the two weeks between now and Third Reading. He said that would be rather ambitious because of the time it normally takes to have those consultations. I would like to be sure that those consultations will start straight away, following this evening's debate so that, by the time we get to Third Reading, we could be convinced that the Government are determined to ensure that children's rights are at the heart of policy-making. I am afraid we have not had that assurance this evening, so we are going to have to come back to this. The Minister has told us that talks can continue, and I am sure that the noble and learned Lord, Lord Woolf, and I will be very happy to continue them.

In the meantime, as has been said, the Government are missing an opportunity to send out the right message to the rest of the world, and particularly the UN Committee on the Rights of the Child, by accepting one or other of these amendments. I have not convinced the Minister so far, but I can assure him this is not the end of it.

**Lord Nash:** It might help the noble Baroness to know that I have been informed that we are starting talks with the devolved Administrations this week, so that part of the consultation has started.

**Baroness Walmsley:** I thank the Minister. I am aware that that is happening and it is very good. However, that is not the same thing as consulting all departments across Whitehall on how they could implement the "have regard" duty. That is what we would like to see starting.

**Lord Nash:** I will take that back and see if we can do it.

**Baroness Walmsley:** I thank the Minister and look forward to hearing what ball has started rolling between now and Third Reading. For the moment, I beg leave to withdraw the amendment.

*Amendment 69 withdrawn.*

*Amendment 70*

*Moved by* ***Lord Watson of Invergowrie***

**70:** After Clause 33, insert the following new Clause—

"Safeguarding unaccompanied refugee children

After section 67 of the Immigration Act 2016 (unaccompanied refugee children: relocation and support), insert—

"67A Strategy for safeguarding of unaccompanied refugee children

(1) The Secretary of State must, by 1 May 2017, publish a strategy for the safeguarding of unaccompanied refugee children living in the United Kingdom, and children who have been identified for resettlement in the United Kingdom under section 67 of this Act.

(2) In formulating the strategy, the Secretary of State must, in addition to other actions he or she considers relevant to the duty under subsection (1)—

(a) consult with all public agencies who may be required to provide services to child refugees, including the European Asylum Support Office, local government and the devolved administrations, for the purposes of enabling them to discharge their safeguarding duties towards those unaccompanied children, as set out in—

(i) section 17 of the Children Act 1989 (provision of services for children in need, their families and others),

(ii) section 47 of that Act (local authority's duty to investigate), and

(iii) the sections of that Act which deal with public agencies' housing and care-leaving responsibilities;

(b) evaluate the procedures for, and speed of, resettling those unaccompanied refugee children who have been identified for resettlement in the United Kingdom under section 67 of this Act;

(c) liaise with non-governmental bodies relevant to the implementation of the strategy;

(d) make recommendations on how to ensure the provision of full-cost reimbursement to agencies required to provide services under the strategy for whatever period is required to fulfil their duties.

(3) The strategy must include—

(a) how safeguarding will differ for those children covered by the strategy who have family members in the United Kingdom and those who do not;

(b) plans for coordinating operational activity with, and learning best practice from, the Syrian Vulnerable Person Resettlement Programme for the purposes of—

(i) expediting a speedy and safe transfer to the United Kingdom of the children who have been identified for resettlement in the United Kingdom under section 67 of this Act; and

(ii) involving local authorities in assessments prior to the arrival of those children, to ensure that safeguarding and other duties are fulfilled;

(c) plans for the publication of monthly updates on the progress of the strategy;

(d) plans to ensure that the Children's Commissioners of England, Wales, Scotland and Northern Ireland are able to make representations on behalf of children relocated under section 67 of this Act, as part of their statutory duty under section 2 of the Children Act 2004 (primary function: children's rights, views and interests), and for the government to consult with the Children's Commissioners of other countries about those countries' arrangements for the safeguarding of unaccompanied refugee children living in those countries;

(e) plans to provide an annual update to Parliament on the arrangements made to support refugee children in the United Kingdom covered by the strategy, which must include details of funding provided, staff deployed, local authorities involved and those children's legal status.""

**Lord Watson of Invergowrie:** My Lords, my noble friend Lord Dubs is abroad at the moment. He has asked me to move Amendment 70, to which I am also a signatory, on his behalf. The amendment, which seeks to amend the Immigration Act 2016, is comprehensive and self-explanatory. Noble Lords will be well aware that my noble friend recently convinced the former Prime Minister, David Cameron, that vulnerable young people, many from war-torn Syria, should be admitted to the UK. My noble friend recently met with the Children's Minister, Edward Timpson,

[Lord Watson of Invergowrie]
the Immigration Minister, Robert Goodwill and the noble Baroness, Lady Williams—whom I am pleased to see on the Front Bench for the first time—to discuss the amendment to the Bill which he moved in Committee.

My noble friend Lord Dubs's suggestions, based on his unrivalled experience in this field, were listened to by Ministers and some were incorporated in the Written Ministerial Statement on safeguarding issued on 1 November. It contained details of a new strategy which was much needed and most welcome. In many ways, the Statement met the proposals contained in Amendment 70; in others it exceeded them. For instance, there is to be an increase in the number of foster carers, as well as fresh proposals to fund supported lodgings for young people.

One critical issue that my noble friend Lord Dubs had raised with Ministers was additional financial support for local authorities that receive the vulnerable young people. Although the Statement stops short of promising a specific figure, the implication is clear in the Government's commitment to,

"regularly review funding to support and care for unaccompanied asylum-seeking and refugee children, working closely with the LGA and local authorities".—[*Official Report*, Commons, 1/11/16; col. 29WS.]

Like my noble friend, I am prepared to accept the spirit in which that has been offered and we look forward to hearing details in the near future.

*6.45 pm*

The new strategy is due to be published by 1 May next year—a date taken from my noble friend Lord Dubs's amendment. The fact that it happens to be International Labour Day means that it will not be allowed to pass unnoticed—certainly not by me, as it also happens to be my birthday. The Government are due credit for moving both quickly and decisively to meet the concerns inherent in Amendment 70 and the proposals that it contains. It is good that the Statement recognises the particular vulnerabilities of these children. It is a positive step that the devolved Administrations will be consulted, and on a quarterly basis. Of course, the Government will consult local authorities and the various Children's Commissioners. The review of the 2014 statutory guidance is also to be welcomed. I also welcome the fact that Parliament will be updated on an annual basis and that regular updates on the number of unaccompanied child refugees transferred to the UK will be provided.

It is encouraging that the Government worked closely with the UNHCR, seeking its advice on how best to safeguard the children left so vulnerable by conflict, and that the advice has been incorporated in the strategy. Taken in the round, the support and sustenance provided to unaccompanied child refugees will be of real value, and will place this country on a much firmer footing and make us much better prepared to respond when humanitarian crises arise in the future. We look forward to the strategy being published. I beg to move.

**Baroness Sheehan (LD):** My Lords, I am a signatory to this amendment because for months after Section 67 of the Immigration Act 2016 came into force there were no processes or resources put in place to indicate any sense of urgency on the part of the Government to use it to bring unaccompanied minors from camps in Greece, Italy or—closer to home—the Jungle camp in Calais to the UK. This was foot dragging on the part of the Government; in spite of the fact that approximately 10,000 unaccompanied children across Europe had disappeared, no sense of urgency seemed to prevail.

This was in sharp contrast to my personal experience of the Jungle camp in Calais, which was that associations on the ground were putting in a monumental effort to meet the standards set and overcome bureaucratic barriers to identify a process whereby unaccompanied minors could be identified as being eligible to come to Britain under Section 67. The Government will recognise the work put in by Safe Passage, a branch of Citizens UK, in this regard.

When this amendment was put down I gladly added my name to it, as its first ask was for the Government to,

"publish a strategy for the safeguarding of unaccompanied refugee children living in the United Kingdom and children who have been identified for resettlement in the United Kingdom under section 67 of this Act".

When I read in detail the joint ministerial Statement by Edward Timpson, Minister of State for Vulnerable Children, and Robert Goodwill, Home Office Minister of State for Immigration, I was disappointed to find that, in committing to publish a strategy by May 2017, there was no mention of children who have been identified for resettlement in the UK under Section 67 of the Immigration Act 2016.

Secondly, the amendment specifically asks that, in proposed new Section 67A(2)(b) of that Act, the Secretary of State, in formulating the strategy, must,

"evaluate the procedures for, and speed of, resettling those unaccompanied refugee children who have been identified for resettlement in the United Kingdom under section 67 of this Act".

Let us compare that to the Government's response:

"In developing our strategy we will evaluate the procedures for, and speed of, transferring unaccompanied asylum-seeking and refugee children who have been identified for transfer from Europe".

That sounds okay—but, crucially, there is again no mention of children who qualify under Section 67 of the Immigration Act 2016.

Furthermore, in paragraph 10 of the joint ministerial Statement, the Government again fail to include children who qualify under Section 67. The Statement says:

"In taking forward this work my department will also revise the statutory guidance published in 2014 on the 'Care of unaccompanied and trafficked children' so it covers the safeguarding of children transferred under Dublin provisions and unaccompanied asylum-seeking children who arrive spontaneously who then explain that they have family in the United Kingdom with whom they wish to live".—[*Official Report*, Commons, 1/11/16; col. 28WS.]

So a third opportunity was missed to include children who qualify under Section 67 of the Immigration Act 2016. I suppose that by "children who arrive spontaneously" the Ministers were referring to minors who resort to taking their chances on the backs of lorries, in effect giving succour to the smugglers who profit by such activity.

The joint Statement fails at every opportunity to fulfil materially and in spirit what the amendment seeks. Indeed, it seems to sanction the spontaneous arrival of unaccompanied minors over the legal route of Section 67 of the Immigration Act 2016 by its omission to mention it even once. Do the Government not recognise that spontaneous arrival means more risk-taking by youngsters who have lost all hope that they will be able to come to the UK by legal means, and that it will add to the total of 14 deaths this year alone of people, including four minors, who lost their lives taking this desperate course of action?

The Ministers' Statement has the effect of taking all sense of urgency out of the need to move children to the UK from France using safe and legal routes. Indeed, since the closure of the camp in Calais, the Home Office officials seem not to have processed many cases at all—if any. Can the Minister tell me how many children have been processed and brought to the UK since the evacuation of the unaccompanied minors from the shipping containers on 2 November? My information is that not a single one has come over since then.

Sadly, the flurry of activity we saw in the wake of media interest during the demolition of the Jungle camp in Calais seems to have died. I am currently receiving reports that no Home Office officials have visited the specialised CAOs—reception centres for children. Nor, for that matter, have any officials, be they French or British. One report from a specialised children's reception centre near the Spanish border states that nobody has been near the children at all; all they do is eat and sleep, and there is no official to ask any questions of, either.

I will leave it there. This is quite an unsatisfactory state of affairs and I look forward to the Minister's response.

**The Lord Bishop of Leeds:** My Lords, the right reverend Prelate the Bishop of Durham is unable to be here and sends his apologies, but he wishes to add his voice to those that warmly welcome the Government's commitment to publish the strategy to ensure the safety and welfare of unaccompanied children coming from Europe and beyond.

The UK has been generous in pledging over £2.3 billion to aid those affected by the crisis in Syria and that region. It is evident that in our local communities people are showing great generosity and hospitality in welcoming those, especially families with children, who are brought here for resettlement. We recognise that while local authorities are understandably nervous of the nature of the commitments involved, they are rising to the challenge well. It is very encouraging that the Local Government Association fully supports this amendment.

Clearly, resourcing will be needed as this strategy is brought into play, and the Government have committed to "review funding regularly". The words of the amendment clearly have more to do with the provision of adequate funding than with the reviewing of it, but no doubt the Government will not allow their strategy to go unimplemented in any respect simply for lack of funds.

The provision of proper care of children through fostering, and of some through supported accommodation, is a key area in the promised strategy. We register that there is a wealth of experience and commitment in community and faith groups, as well as established charities, in this area; it is to be hoped that the Government will draw on that experience as we go forward.

The inclusion of an element of independent oversight through the Children's Commissioners is another welcome element in the strategy. Whether or not the useful suggestion of an independent guardian for each child is taken up, it is important that, as in other areas where vulnerable people are dependent on statutory bodies for their well-being, there is a significant element of independent scrutiny and advocacy.

We on this Bench are pleased to learn of the Government's intentions and wish them well in doing justice to the full content of the present amendment.

**Baroness Lister of Burtersett:** My Lords, I very much welcome the Government's Statement on the safeguarding of unaccompanied asylum-seeking and refugee children, which seems to offer a positive way forward.

I will raise just a couple of issues. The first is one I raised back in July: what will happen to these children when they reach the age of 18 and technically become adults? Ministers had been giving mixed messages on this. In response to an Oral Question where I tried to clarify the situation, the noble Lord, Lord Ahmad of Wimbledon, wrote to me:

> "We are considering all options and still need to consult with local authorities and other partners such as the UNHCR, which could influence the final outcome. However, where we accept that cases are in need of international protection we would normally grant 5 years' leave with full access to benefits and services, including education. Unaccompanied children granted a protection status would be entitled to the full level of support afforded to all 'looked after children' in the UK, including leaving care benefits when they turn 18".

That was encouraging, but can the Minister say whether the Government have come to a conclusion, having considered all the options and consulted local authorities? This is such an important issue to the safeguarding of children in the full sense of the term. As the Refugee Children's Consortium argues, a safeguarding strategy,

> "should also be a plan for future permanence and stability. The UK is accepting responsibility for young people under the Dubs amendment on the basis that their future is here. A national plan must be clear about this, and the government should be clear about setting out their views on the status of these children".

Clarity about their future in the UK is crucial to the psychological well-being of a group of highly vulnerable children and young people, who have undergone the most terrible ordeals. According to a piece in Sunday's *Observer*, psychological assessments carried out for Citizens UK have found that nearly all the children who have been in the Calais camp are suffering serious mental health conditions such as post-traumatic stress or depression. I therefore also ask what steps the Government will be taking to ensure that the children who come to the UK receive proper support and care through the mental health services.

I am a member of the inquiry of the APPG on Refugees, which is entitled "Refugees Welcome?". Yesterday we heard evidence of the impact on the mental health of young asylum-seekers, whose lives were on hold for often well over a year until a final decision was reached on their status. We heard about one young man who could think about nothing else,

[Baroness Lister of Burtersett]
he was so absolutely obsessed with what was going to happen to him—and can you blame him? They do not know what their futures are going to be. As well as impacting adversely on their mental health, it undermines their integration into British society.

*7 pm*

This was an issue raised by the JCHR when I was still a member—as was the noble Lord, Lord Lester—in its report on the human rights of unaccompanied children and young people in the UK. We recommended then that:

"During a period of discretionary leave, decision-making should be encouraged as soon as there is sufficient evidence against which to evaluate a claim. Where it is in the best interests of the child to remain in the United Kingdom, indefinite leave to remain should be granted as early as that judgment can be made, to enable children to access higher education and enter the labour market. Where return is considered to be appropriate, a care plan should be constructed to inform and prepare a child for return in adulthood. In either case, support should persist until the objectives of a properly considered care plan are met".

I think this should be considered as part of the safeguarding strategy. The JCHR also recommended,

"that the Government commission pilots in England and Wales that builds upon and adapts the model of guardianship trialled in Scotland … and … evaluate the case for establishing a wider guardianship scheme";

the right reverend Prelate mentioned this in his speech. The refugee inquiry heard yesterday about the valuable role played by the Scottish Guardianship Service. The Government have previously refused to consider such a scheme in England and Wales, other than for trafficked children, but I urge them to think again in the context of developing a safeguarding strategy for unaccompanied asylum-seeking and refugee children, because experience suggests that such a scheme could play a pivotal role.

**The Earl of Listowel (CB):** My Lords, I welcome the Government's Statement. I am remembering an experience I had about 15 years ago, getting acquainted with a young Afghan woman in a hostel over several months. Each week when I saw her, she would be either in tears or very sad. She spoke a certain dialect of Pashto, and a translator was needed to be brought across London to help her communicate with others. She was a very lonely, isolated young woman. I remember arriving one day and hearing that she was in tears again. Her family's city was being shelled, but she could not communicate with them to know what was happening. We cannot underestimate the trauma that many of these young people have experienced.

I would like to follow the noble Baroness, Lady Lister, in asking about their experience after they leave care. The strategy of distributing young people across England, which began in July, is very welcome, but there is concern that there may be lack of expertise within the new receiving local authorities. I would appreciate reassurance about how that expertise is being developed. In particular, there is always the concern that professionals are not giving young people—that is, unaccompanied asylum-seeking children—information early enough to clarify their immigration status. I thank the Minister for that nod.

It would be very helpful to get more information about what happens to these young people when they leave care—for example, data on whether they return home voluntarily or disappear from sight altogether. All that kind of information would be helpful in terms of understanding their welfare needs into the future. I will not speak further now. I look forward to the Minister's response.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, I am very grateful to the noble Lord, Lord Dubs, the right reverend Prelate the Bishop of Durham, the noble Baroness, Lady Sheehan, and the noble Lord, Lord Watson of Invergowrie, for this amendment on the vital issue of the safeguarding of unaccompanied asylum-seeking and refugee children. The noble Lord, Lord Dubs, really wanted to be here tonight but is attending the small matter of a presidential election. He toyed with the question of which one to attend but, as I understand it, could not get a flight home—and that is genuinely why he is not here tonight. I echo the right reverend Prelate's words about the work that the Churches do—they do sterling work—especially, as I mentioned earlier today, the role they have played in the community sponsorship scheme, a scheme in which the most reverend Primate the Archbishop of Canterbury also is engaged. Schemes such as that are very beneficial indeed to some of the people coming to this country.

The Government are committed to safeguarding and promoting the welfare of children and providing help for those in genuine need of international protection. In the light of the events of the past few weeks around the closure of the camp in Calais, we agreed that further action needs to be taken to supplement existing safeguarding guidance and practices and to ensure that we continue to act in the best interests of those children arriving in the UK.

Our priority throughout has been to ensure the safety and welfare of the children, whether they are transferred here or arrive of their own accord. We have already taken significant action. In July, for example, we implemented the national transfer scheme to promote a fairer distribution of care responsibility among local authorities across the country. That was accompanied by very substantial increases in Home Office funding to local authorities. We have also worked closely with France and other EU countries, with local authorities here, and with other partners to transfer eligible children to the UK as quickly as proper safeguarding procedures and other necessary checks will allow.

Since 10 October more than 60 girls—many of whom have been identified as at high risk of sexual exploitation—have arrived in the UK and are now receiving the care and support that noble Lords talked about. In total, we have transferred more than 300 children. More are expected to follow in the coming days and weeks.

We are in full agreement that there is absolute value in a strategy setting out how we will safeguard these unaccompanied children. However, we believe that this intention would be better served through the commitments given on 1 November in the Written Ministerial Statement by the Minister for Vulnerable Children and Families and the Minister for Immigration. The strategy that the Government have committed to

publish by 1 May 2017 will reinforce the comprehensive protection that we already provide for unaccompanied asylum-seeking children in this country and for those who have been transferred here from Europe, whether they are reunited with family members or looked after by a local authority. To reiterate, the care they receive is exactly what we would expect to provide for UK children. These children are no different.

We will also set out plans to increase foster care capacity for those children who are looked after and will consider what further action can be taken to prevent them from going missing. This will ensure they receive the best support possible while seeking refuge in our country. Additionally, we will review what information is communicated to these children about their rights and their entitlements, revise statutory guidance provided to local authorities on how to support and care for them, and regularly review the level of funding that is granted to assist them in doing so. To ensure that we are held to account on our progress, we will provide annual updates to Parliament and more regular quarterly updates to the Children's Commissioners across the UK.

We believe that the commitments we have given are the best approach to safeguarding the welfare of these children. I fully agree with the spirit of this amendment, as I said to the noble Lord, Lord Dubs, but primary legislation on this matter would limit our ability to respond to what is a complex and developing situation across Europe and beyond. That is why we set out our commitments through the WMS. This approach also enables us to take proper account of the devolved responsibility for safeguarding matters, which the amendment would not. We welcome the support of local authorities across the UK in dealing with the needs of unaccompanied children and will continue to work closely with them and with the devolved Administrations on these issues.

The Government are determined to do everything we can to protect these unaccompanied children. Their welfare in the UK is our first priority. That is why the comprehensive strategy we have committed to publish will build on the actions that we have already taken and go further to ensure that these children are, and remain, safeguarded.

The Government are also clear that we must do everything possible to prevent children from undertaking these perilous journeys to Europe. That is why we have pledged over £2.3 billion in response to the crisis in Syria and resettled nearly 3,000 people, half of whom are children, under the Syrian vulnerable persons resettlement scheme. We remain committed to resettling 20,000 of the most vulnerable Syrian refugees direct from the region and, in addition, we have established a new resettlement scheme focused on vulnerable children in the Middle East and north Africa.

I had some answers to the questions asked by the noble Baroness, Lady Sheehan. She said that there was no mention of Section 67. The WMS goes wider than the proposed amendment, and those transferred from Europe includes those under Section 67, as Section 67 is not actually a resettlement route. The other question is about how many Home Office officials were in the camp and supported the clearance. There were several hundred supporting the camp clearance. I have said this many times at this Dispatch Box, but we can operate in France only in ways agreed with the French Government. We cannot just go in and do what we would. I hope that the noble Baroness will be content not to press her amendment.

**Baroness Lister of Burtersett:** I did ask two very specific questions, or raised two issues. Maybe the Minister cannot answer them now, but will she undertake to write to me about them, please? They were about what happens to the children when they reach the age of 18 and guardianship.

**Baroness Williams of Trafford:** On a child reaching 18, obviously the needs of every child who comes here are different, depending on the circumstances. If a child is in local authority care and is in that transition period into adulthood, it would be exactly the same process as a child from this country—and it may be that the child is returning to their country. I can lay it out in more detail for the noble Baroness, but each situation is different. Was there a second question?

**Baroness Lister of Burtersett:** On guardianship.

**Baroness Williams of Trafford:** I shall write to the noble Baroness on that.

**Baroness Sheehan:** I thank the Minister for her reply and accept that there were a lot of Home Office officials during the evacuation of the minors from the shipping containers. The question I asked was about how many officials there were after the evacuation, because my information was that there were not very many.

**Baroness Williams of Trafford:** I cannot give the noble Baroness a specific figure, because the figures change all the time depending on the capacity that is needed at the camp at various times.

**Lord Watson of Invergowrie:** My Lords, this has been a vigorous debate on a very important subject with a very broad base of agreement. I take on board the points made by the noble Baroness, Lady Sheehan—I was not aware of that before, but I think that the Minister has answered the question on Section 67 of the Immigration Act, and the two points raised by my noble friend Lady Lister will be addressed by letter. All in all, and given what was said at the outset—that my noble friend Lord Dubs was very satisfied with the Statement—I beg leave to withdraw the amendment.

*Some Lords objected to the request for leave to withdraw the amendment, so it was not granted.*

*7.13 pm*

*Division on Amendment 70*

*Contents 68; Not-Contents 203.*

*Amendment 70 disagreed.*

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*7.25 pm*

*Amendment 71 not moved.*

*Amendment 71A*

*Moved by* ***Lord Nash***

**71A:** Before Clause 34, insert the following new Clause—

"Social Work England

(1) A body corporate called Social Work England is established.

(2) Social Work England is referred to in this Part as "the regulator".

(3) Schedule (Social Work England) makes further provision about the regulator.

(4) The Secretary of State may by regulations rename Social Work England.

(5) Regulations under subsection (4) may include consequential amendments to any provision contained in or made under this or any other Act."

**Lord Nash:** My Lords, I thank noble Lords for the supportive work and consultation across the House since Committee, which has substantially strengthened the Bill in this regard. I speak on behalf of both the Department for Education and the Department of Health in saying how much we value the expertise that noble Lords across the House have added to the debate. We have listened carefully to their concerns and have tabled a number of amendments to reflect them. I hope noble Lords will recognise how far we have come.

I shall now pause to hear the responses of noble Lords to what I have said and to allow them to speak to their amendments.

**Lord Hunt of Kings Heath (Lab):** My Lords, I thank the noble Lord, Lord Nash, his ministerial colleagues and officials because we had the opportunity for a series of meetings between Committee and Report which have culminated in the amendments the noble Lord has brought before your Lordships' House tonight. I am grateful to him and his colleagues.

Clearly we now have an independent regulator, overseen by the Professional Standards Authority, and we are happy with that outcome. For the social work profession, the improvement agenda and the regulatory agenda this is a sensible way forward.

I have couple of points to mention to the Minister to which he may wish to respond in writing. First, on the issue of the transition, there is a question of whether the cases now being held by the existing regulator will remain with that regulator or will transfer to the new regulator when it has been set up. My advice to the Government would be to leave those cases with the existing regulator so that the new regulator can start with a clean sheet. The Government will need to consider this and I would be happy for the Minister to write to me in due course.

Secondly, the PSA feels that the powers have perhaps been too widely drawn. I understand the Government are looking at this issue. Perhaps the Minister could confirm that. Thirdly, can he confirm that the consultation on the establishment of the regulator will be extensive?

On fees, I understand from the note that we have seen that, in essence, the setting-up costs will be met by the Minister's department, which will also meet the additional costs of the new regulator, and that the commitment is to the next Parliament. If he could confirm that, I would be extremely grateful.

Overall, I am happy with the outcome.

**Baroness Pinnock:** My Lords, on behalf of the Members here I thank the Minister for the significant changes that have been made to social work regulation. They have gone a great deal of the way towards satisfying the concerns that were raised at both Second Reading and in Committee. It is good that the Minister has listened carefully and has responded in a positive way. I thank him for that.

*7.30 pm*

**Lord Warner:** My Lords, I echo the support given by other parts of the House to the Minister. I am grateful for the fact that Edward Timpson was very much in listening mode. He was extremely helpful in taking forward and dealing with the concerns many of us had with the original version of Part 2.

I echo the point made by the noble Lord, Lord Hunt, regarding the PSA's concerns about how widely the powers have been drawn. It has been given powers to go to the High Court, which is not the arrangement it has with all the other health and care regulators. It is pretty nervous about the cost implications. Also, on the point the noble Lord made about the transition arrangements, a very large number of cases need to be dealt with, and there needs to be an orderly transfer.

My name has been added to Amendment 116, the intention of which is to get the Minister to explain why the affirmative resolution procedure applies to most of this part of the Bill, but the negative procedure applies to changing the name of the regulator. Is there some cunning plot in the DfE regarding another lot of names they have in mind?

**Lord Nash:** My Lords, I am grateful to the noble Lords, Lord Hunt and Lord Warner, for their comments. I will write to the noble Lord, Lord Hunt, about the transition arrangements. His advice is helpful. I can reassure noble Lords that we have no intention of expanding the PSA's role in relation to its power to appeal cases to the High Court, but I will cover that in a letter to the noble Lord.

On funding Social Work England, we will ensure that any set-up costs will not fall on social workers themselves, and we are committed to supporting its running costs. Social workers already pay one of the lowest fees of any profession and we are determined to keep these as low as possible. It is of course normal practice for professional regulation fees to be subject to review from time to time. However, the amendments will ensure that Social Work England will also have to seek the approval of the Secretary of State before determining the level of fees. This will allow Ministers to exercise appropriate control over any future plans by the regulator to increase fees. I hope that reassures the noble Lord.

On the issue raised by the noble Lord, Lord Warner, we have reflected the principle he wanted in Amendment 115, which inserts a new clause to make specific provision for parliamentary procedures relating to regulations made under Part 2. This sets out that all regulations in the main body of Part 2 will be subject to the affirmative procedure. There is an exception for renaming the regulator. Frankly, that is because we believe a name change represents a relatively minor change and the negative procedure allows for sufficient scrutiny. A name change would, of course, not involve any change to the fundamental objectives and functions of the regulator or any of the other provisions governing the regulator's operations. I hope the noble Lord is reassured to hear that, and that noble Lords are happy with the amendments.

*Amendment 71A agreed.*

*Amendment 71B*

*Moved by* ***Lord Nash***

**71B:** Before Clause 34, insert the following new Clause—

"Over-arching objective

(1) The over-arching objective of the regulator in exercising its functions is the protection of the public.

(2) The pursuit by the regulator of its over-arching objective involves the pursuit of the following objectives—

(a) to protect, promote and maintain the health, safety and well-being of the public;

(b) to promote and maintain public confidence in social workers in England;

(c) to promote and maintain proper professional standards for social workers in England."

*Amendment 71B agreed.*

***Clause 34: Social worker regulations***

*Amendment 71C*

*Moved by* ***Lord Nash***

**71C:** Clause 34, leave out Clause 34

*Amendment 71C agreed.*

***Clause 35: The regulator***

*Amendment 71D*

*Moved by* ***Lord Nash***

**71D:** Clause 35, leave out Clause 35

*Amendment 71D agreed.*

***Clause 36: Registration***

*Amendments 71E to 71L*

*Moved by* ***Lord Nash***

**71E:** Clause 36, page 23, line 17, leave out subsection (1) and insert—

"(1) The regulator must keep a register of social workers in England.

(1A) The Secretary of State may by regulations require the regulator to keep a register of people who are undertaking education or training in England to become social workers."

**71F:** Clause 36, page 23, line 22, after "The" insert "Secretary of State may by"

**71G:** Clause 36, page 23, line 23, leave out paragraph (a) and insert—

"( ) authorise the regulator to appoint a member of staff as a registrar;

( ) make provision about the functions of the registrar;"

**71H:** Clause 36, page 23, line 24, leave out "may"

**71J:** Clause 36, page 23, line 26, at end insert—

"( ) the combination of the registers mentioned in subsections (1) and (1A);"

**71K:** Clause 36, page 23, line 36, leave out "fitness to be or to remain registered" and insert "any matter in connection with the register or registration"

**71L:** Clause 36, page 23, line 37, at end insert—

"( ) evidence in legal proceedings of matters contained in the register (including provision for a certificate to be conclusive proof)."

*Amendments 71E to 71L agreed.*

***Clause 37: Restrictions on practice and protected titles***

*Amendments 71M and 71N*

*Moved by* ***Lord Nash***

**71M:** Clause 37, page 24, line 2, leave out "Social worker regulations may" and insert "The Secretary of State may by regulations"

**71N:** Clause 37, page 24, line 5, after "use" insert ", in relation to social work in England,"

*Amendments 71M and 71N agreed.*

***Clause 38: Professional standards***

*Amendments 71P to 71S*

*Moved by* ***Lord Nash***

**71P:** Clause 38, page 24, line 9, leave out subsection (1) and insert—

"(1) The regulator must determine and publish professional standards for social workers in England.

"(1A) If the regulator is required to keep a register of students, it must determine and publish standards of conduct or ethics for registered students.

(1B) Before determining a standard under this section the regulator must—

(a) consult such persons as the regulator considers appropriate, and

(b) obtain the Secretary of State's approval of the standard."

**71Q:** Clause 38, page 24, line 13, leave out "Social worker regulations may" and insert "The Secretary of State may by regulations"

**71R:** Clause 38, page 24, line 14, after "standard" insert "under subsection (1)"

**71S:** Clause 38, page 24, line 21, leave out subsection (4)

*Amendments 71P to 71S agreed.*

***Clause 39: Education and training***

*Amendments 71T to 71YE*

*Moved by* ***Lord Nash***

**71T:** Clause 39, page 24, line 27, leave out subsection (1) and insert—

"(1) The regulator must, in relation to people who are or who wish to become social workers in England, determine and publish standards of education or training.

(1A) Before determining a standard under this section the regulator must—

(a) consult such persons as the regulator considers appropriate, and

(b) obtain the Secretary of State's approval of the standard."

**71U:** Clause 39, page 24, line 30, leave out "Social worker regulations may" and insert "The Secretary of State may by regulations"

**71V:** Clause 39, page 24, line 31, leave out "accreditation" and insert "approval"

**71W:** Clause 39, page 24, line 36, leave out "accreditation" and insert "approval"

**71X:** Clause 39, page 24, line 39, leave out first "accreditation" and insert "approval"

**71Y:** Clause 39, page 24, line 39, leave out second "accreditation" and insert "approval"

**71YA:** Clause 39, page 24, line 40, leave out first "accreditation" and insert "approval"

**71YB:** Clause 39, page 24, line 40, leave out second "accreditation" and insert "approval"

**71YC:** Clause 39, page 24, line 41, at end insert—

"( ) inspections in connection with the approval or continued approval of courses or qualifications (including provision for the appointment of people to carry out inspections);"

**71YD:** Clause 39, page 24, line 41, at end insert—

"( ) appeals against decisions in connection with approval;"

**71YE:** Clause 39, page 24, line 42, at end insert—

"( ) The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about—

(a) payments to be made to those appointed;

(b) staff, facilities or other assistance."

*Amendments 71T to 71YE agreed.*

### *Clause 40: Discipline and fitness to practise*

*Amendments 71YF to 71YJ*

*Moved by* ***Lord Nash***

**71YF:** Clause 40, page 25, line 2, leave out subsection (1) and insert—

"(1) The regulator must—

(a) make arrangements for protecting the public from social workers in England whose fitness to practise is impaired, and

(b) make arrangements for taking other disciplinary action against social workers in England.

(1A) The Secretary of State may by regulations require the regulator to make arrangements for taking disciplinary action against registered students.

(1B) The Secretary of State may by regulations make further provision about—

(a) fitness to practise as a social worker in England,

(b) discipline of social workers in England or registered students, and

(c) the arrangements to be made under subsection (1) or (1A)."

**71YG:** Clause 40, page 25, line 7, at end insert "on behalf of the regulator"

**71YH:** Clause 40, page 25, line 17, at end insert—

"( ) publication of decisions."

**71YJ:** Clause 40, page 25, line 17, at end insert—

"( ) The provision that may be made about persons appointed under the regulations includes provision about—

(a) payments to those persons;

(b) staff, facilities or other assistance."

*Amendments 71YF to 71YJ agreed.*

*Amendments 72 and 73 not moved.*

### *Clause 41: Advisers*

*Amendments 74 and 75*

*Moved by* ***Lord Nash***

**74:** Clause 41, page 25, line 19, leave out "Social worker regulations may" and insert "The Secretary of State may by regulations"

**75:** Clause 41, transpose Clause 41 to before Clause 34

*Amendments 74 and 75 agreed.*

### *Clause 42: Default powers*

*Amendments 76 to 82*

*Moved by* ***Lord Nash***

**76:** Clause 42, page 25, line 31, leave out subsection (1)

**77:** Clause 42, page 25, line 33, leave out from beginning to "give" and insert "The Secretary of State may"

**78:** Clause 42, page 25, line 38, leave out "regulations may" and insert "Secretary of State may by regulations"

**79:** Clause 42, page 26, line 2, leave out "specified person" and insert "Secretary of State"

**80:** Clause 42, page 26, line 5, leave out "specified person" and insert "Secretary of State"

**81:** Clause 42, page 26, line 7, leave out "specified person's" and insert "Secretary of State's"

**82:** Clause 42, transpose Clause 42 to after Clause 47

*Amendments 76 to 82 agreed.*

### *Clause 43: Publication and sharing of information*

*Amendments 83 and 84*

*Moved by* ***Lord Nash***

**83:** Clause 43, page 26, leave out lines 9 and 10 and insert—

"(1) The regulator may publish or disclose information about any matter relating to its functions or give advice about any matter relating to its functions.

(2) The Secretary of State may by regulations —

(a) make provision requiring the regulator to publish or disclose information, or give advice, under subsection (1);

(b) make other provision supplementing subsection (1)."

**84:** Clause 43, transpose Clause 43 to after Clause 47

*Amendments 83 and 84 agreed.*

### *Clause 44: Duty to co-operate*

*Amendments 85 and 86*

*Moved by* ***Lord Nash***

**85:** Clause 44, page 26, leave out lines 12 and 13 and insert—

"(1) The regulator must where appropriate co-operate with the following in the exercise of its functions—

(a) Social Care Wales,

(b) the Scottish Social Services Council,

(c) the Northern Ireland Social Care Council, and

(d) any other person specified in regulations made by the Secretary of State.

(2) Until section 67(3) of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) comes fully into force, the reference in subsection (1)(a) to Social Care Wales is to be read as a reference to the Care Council for Wales."

**86:** Clause 44, transpose Clause 44 to after Clause 47

*Amendments 85 and 86 agreed.*

### *Clause 45: Transfer schemes*

*Amendments 87 to 90*

*Moved by* ***Lord Nash***

**87:** Clause 45, page 26, line 15, leave out subsections (1) to (3) and insert—

"( ) The Secretary of State may make a scheme for the transfer of property, rights and liabilities from the Health and Care Professions Council (the "old regulator") to Social Work England.

( ) The things that may be transferred under a transfer scheme include—

(a) property, rights and liabilities that could not otherwise be transferred;

(b) property acquired, and rights and liabilities arising, after the making of the scheme."

**88:** Clause 45, page 26, line 31, leave out "The regulations may provide that"

**89:** Clause 45, page 26, line 45, at end insert—

"( ) A transfer scheme may provide—

(a) for modification by agreement;

(b) for modifications to have effect from the date when the original scheme came into effect."

**90:** Clause 45, transpose Clause 45 to after Clause 50

*Amendments 87 to 90 agreed.*

### *Clause 46: Fees*

*Amendments 91 to 97*

*Moved by* ***Lord Nash***

**91:** Clause 46, page 27, line 9, leave out "Social worker regulations may" and insert "The Secretary of State may by regulations"

**92:** Clause 46, page 27, line 15, leave out first "accreditation" and insert "approval"

**93:** Clause 46, page 27, line 15, leave out second "accreditation" and insert "approval"

**94:** Clause 46, page 27, line 17, leave out subsection (2)

**95:** Clause 46, page 27, line 20, leave out subsection (3) and insert—

"(3) The regulator is responsible for setting the level of fees in accordance with any provision made by the regulations.

(3A) Before determining the level of any fee the regulator must—

(a) consult any persons they consider appropriate, and

(b) obtain the approval of the Secretary of State."

**96:** Clause 46, page 27, line 26, leave out "whoever is setting the fees to do so" and insert "the level of any fees to be set"

**97:** Clause 46, page 27, line 28, at end insert—

"(6) Regulations under this section may include provision about the collection and recovery of fees.

(7) The regulations must require the regulator to pay any fee income to the Secretary of State unless the Secretary of State, with the consent of the Treasury, directs otherwise."

*Amendments 91 to 97 agreed.*

*Amendment 98 not moved.*

### *Clause 47: Grants*

*Amendment 99*

*Moved by* ***Lord Nash***

**99:** Clause 47, page 27, leave out lines 30 to 32 at end insert—

"(1) The Secretary of State may make grants to the regulator.

(2) A grant under this section may be made subject to any conditions the Secretary of State thinks are appropriate."

*Amendment 99 agreed.*

*Amendments 100 and 101*

*Moved by* ***Lord Nash***

**100:** After Clause 47, insert the following new Clause—

"Information for Secretary of State

The regulator must provide any information that the Secretary of State requests in relation to the exercise of the regulator's functions."

**101:** After Clause 47, insert the following new Clause—

"Oversight by the Professional Standards Authority for Health and Social Care

Schedule (Oversight by the Professional Standards Authority for Health and Social Care) contains amendments to give the Professional Standards Authority for Health and Social Care functions to oversee the regulator."

*Amendments 100 and 101 agreed.*

### *Clause 48: Offences*

*Amendments 102 to 106*

*Moved by* ***Lord Nash***

**102:** Clause 48, page 27, line 35, leave out from beginning to "create" and insert "The Secretary of State may by regulations"

**103:** Clause 48, page 27, line 41, leave out "the regulations" and insert "regulations under section 36 or 40"

**104:** Clause 48, page 28, line 2, leave out "the regulations" and insert "regulations under section 36 or 40"

**105:** Clause 48, page 28, line 3, leave out "If social worker regulations create an offence,"

**106:** Clause 48, transpose Clause 48 to after Clause 40

*Amendments 102 to 106 agreed.*

### *Clause 49: Conferral of functions and sub-delegation etc*

*Amendments 107 to 111*

*Moved by* ***Lord Nash***

**107:** Clause 49, page 28, line 7, leave out "Social worker regulations" and insert "Regulations under this Part"

**108:** Clause 49, page 28, line 9, leave out "Social worker regulations" and insert "Regulations under this Part"

**109:** Clause 49, page 28, line 10, leave out from "Crown" to end of line 11

**110:** Clause 49, page 28, line 12, leave out subsection (3) and insert—

"( ) Regulations under this Part may—

(a) confer power on the regulator to make rules;

(b) make provision in connection with the procedure for making those rules (including provision requiring the regulator to obtain the Secretary of State's approval before making rules of a specified description)."

**111:** Clause 49, page 28, line 14, leave out "social worker regulations" and insert "regulations under this Part"

*Amendments 107 to 111 agreed.*

### *Clause 50: Consultation about social worker regulations*

*Amendments 112 to 114*

*Moved by* ***Lord Nash***

**112:** Clause 50, page 28, line 20, leave out "social worker regulations" and insert "regulations under this Part"

**113:** Clause 50, page 28, line 22, leave out "social worker regulations" and insert "regulations under this Part"

**114:** Clause 50, page 28, line 24, at end insert—

"( ) The duties imposed by subsections (1) and (2) do not apply—

(a) to regulations under section (Social Work England) (renaming of Social Work England), or

(b) where the regulations amend other regulations and, in the opinion of the Secretary of State, they do not make any substantial change."

*Amendments 112 to 114 agreed.*

*Amendment 115*

*Moved by* ***Lord Nash***

**115:** After Clause 50, insert the following new Clause—

"Parliamentary procedure for regulations

(1) Regulations under section (Social Work England) (renaming of Social Work England) are subject to the negative resolution procedure.

(2) Any other regulations under this Part are subject to the affirmative resolution procedure."

*Amendment 116 (to Amendment 115) not moved.*

*Amendment 115 agreed.*

*Amendment 117*

*Moved by* ***Lord Warner***

**117:** After Clause 50, insert the following new Clause—

"Time limit and review

(1) This Chapter (sections (Social Work England) to 52), Schedule (Social Work England) and any regulations made under these provisions, shall cease to have effect at the end of the period of five years starting with the day on which they come into force, unless the conditions in subsections (2) and (3) have been met.

(2) The conditions in this subsection are that—

(a) there has been an independent review of the effectiveness of these provisions, which has included consultation with representatives of the social work profession and other interested parties;

(b) a report of the review has been laid before Parliament, together with a response to the review by the Secretary of State.

(3) The condition in this subsection is that the Secretary of State has, by regulations, made such changes to the provisions listed in subsection (1) as he or she considers necessary, having full regard to the findings of the review.

(4) Regulations under subsection (3) must be made by statutory instrument, and may not be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament."

**Lord Warner:** My Lords, I will try not to detain the House for much longer on this Bill, but Amendment 117 in my name and those of the noble Lords, Lord Hunt and Lord Ramsbotham, and the noble Baroness, Lady Walmsley, does no damage whatever to the Government's wish to progress the establishment of a new social work regulator in the way now proposed with the new government amendments. Instead, it gives the Government the chance to review progress after a decent interval and in the light of experience and, as I will come to briefly in a moment, likely changes in the regulation of other health and care regulators.

In essence, the amendment would impose a pause after five years of all the changes in the amended Part 2 of the Bill and the associated schedule and regulations made under these provisions, unless the Government have met three relatively modest conditions. The first would be an independent review of the effectiveness of the changes that includes consultation with the social work profession and relevant interests. The second would be to lay the review's report before Parliament, together with the Secretary of State's response. The third would allow the Secretary of State to make such changes to Part 2 as she thinks appropriate, having full regard to the findings of the review.

As I have said already, I welcome the way the Government have responded to the many concerns about Part 2. I regret that the Government were unwilling to go a little further and keep the governance of the new regulator under the Privy Council Office, as is the case with the current social work regulator and all the health and care regulators. However, that disappointment is not the main reason for the amendment, which the clerks helpfully framed.

Behind the amendment are two main concerns. First, the history of social work regulation has not been a happy one, as everyone knows only too well. The introduction of a new regulator has itself not had a very orderly birth. A review after a few years would seem a sensible precaution, given the history of this area. Secondly and perhaps more importantly is my concern, shared by the Professional Standards Authority, that a high proportion of social workers to be the concern of the new regulator do not work in children's social care, whose problems have driven the reform in the Bill. These other social workers work in adult social care and mental health, where their main working relationships are usually with adults and the NHS and nothing whatever to do with the DfE.

There is a totally different change agenda going on for these adult social work staff that is bound up with the integration of the NHS and adult social care under the Department of Health's oversight, plus integrating better mental and physical healthcare. These are the

[LORD WARNER]
agendas that one half of the social care workforce are engaged with. Until the Bill came along, the regulation of all social workers had been under the same governance and oversight as all the other health and care professions. All these professions were on the cusp—and still are—of further regulatory reform following a Law Commission report. That programme of reform is still on track for public consultation and new legislation, quite possibly in this Parliament. It is quite possible that these changes would have implications for the new social work regulator, Social Work England. In its evidence and briefing for this debate, the PSA has expressed its concerns about whether there will be proper alignment between further regulatory reform of all these other health and care professions, and the work done by the new Social Work England regulator.

In these circumstances, it would seem wise to prepare for a pause and review within about five years to see how things are going with the new social work regulator and with this wider regulatory reform agenda for the health and care professions, with whom social workers' future is, in many regards, deeply embedded.

That is what my amendment would do. It would not stop the Education Secretary pressing on with the changes in the Bill, but it would ensure that, across Whitehall, social workers were not lost sight of in the wider health and care professions regulatory reform agenda.

I hope that the Minister will see this as a constructive amendment and that he and his colleagues will consider it sympathetically and perhaps discuss it further with me and others who are interested in this area—and possibly the PSA as well—before Third Reading. I beg to move.

**Lord Hunt of Kings Heath:** I support the amendment in the name of the noble Lord, Lord Warner, and hope that the noble Lord, Lord Nash, will be prepared to meet him in the next week to discuss it. We wish the new social work regulator all the best in its difficult task. I hope that it will be able to learn the lessons of the failures of the past and give the profession the kind of stability and leadership in regulation that it requires.

We also know that the Department of Health is gearing up to a review of and potential legislation on health regulation, which is bound to have an impact on adult social workers—the noble Lord, Lord Warner, set that out very clearly. We want the integration of professional workers to be encouraged as far as possible across health and social care and for there to be consistency in regulation more generally. Given that this major work is to be undertaken over the next few months and years, the amendment provides a backstop which essentially says that there should be a time limit on the arrangements being taken forward, unless the condition, which is an independent review to be considered by the Secretary of State, gave assurance that the Government collectively were making sure that the integration and consistency that we want would be implemented in full.

The noble Lord, Lord Nash, and his ministerial colleagues have been exceptionally kind in listening to noble Lords on this Bill. I hope that he might be prepared to do the same on this amendment.

**Baroness Walmsley:** My Lords, my name is also on this amendment. The noble Lord, Lord Warner, has explained the reasons for it extremely cogently. The Government are trying to make a change at a time of considerable turbulence among social workers, both those who work with children and those who work with adults. As the noble Lord, Lord Hunt, has just said, further change is coming down the track.

I hope that the Government will accept the principle of review, learn and, if necessary, act after five years, by which time the changes in regulation that they are proposing will have had time to embed and we will have had the chance to see whether they have achieved the improvements that the Government are looking for. I can understand the Government's wish to go about it in the way that they are doing given their requirement for considerable improvement in social work but, as the noble Lord, Lord Warner, clearly pointed out there is a good case for standing back after a reasonable period and looking at it again to see whether it has worked as everybody hopes it will.

**Lord Nash:** My Lords, I am grateful for noble Lords tabling Amendment 117 and welcome the intention behind it. We are committed to ensuring that these provisions and the work of Social Work England are independently reviewed. It is crucial that we ensure that the provisions bring about the reforms that are needed and that they remain fit for purpose.

I am sure that noble Lords agree that we must avoid any potential for the social work profession not to be regulated, but we should not risk the regulatory oversight of the profession being in any way uncertain. I can reassure noble Lords that this Government are making substantial investment in social work reform and will not leave the success of the body to chance. I can commit to go further than promising to reflect on the matter and meet the noble Lords who have raised this issue.

To ensure that Social Work England remains fit for purpose and carries out its functions effectively—and at the risk of being accused of trying to end this stage of consideration of the Bill on a high—I want to signal now my intention to table an amendment at Third Reading that commits on the face of the Bill to the carrying out of a formal independent review of the regulator five years from the point that Social Work England becomes fully operational. We will require the review to be laid before Parliament.

I anticipate that the review will consider the operation of the regulator with particular regard to its governance and oversight arrangements. I will also require those undertaking the review to consult representatives of the social work profession and other interested parties. I also reassure noble Lords that, following the review and discussions with Members of Parliament and Peers, the Secretary of State for Education and the Secretary of State for Health will be required to publish a response setting out the actions that will be taken.

I wholly agree with noble Lords that appropriate measures need to be in place to ensure that these provisions are independently reviewed. As I set out earlier, the Professional Standards Authority will undertake an independent review annually on how Social Work England discharges its functions. The amendment that I will propose will strengthen these measures further.

I hope that the commitments that I have set out tonight—that an annual report will be published by the Professional Standards Authority, and the tabling of an amendment that would see a full independent review after the first five years of Social Work England's operation published and accompanied by a statement from both Secretaries of State setting out clearly their response—will reassure noble Lords of the Government's commitment to getting this right not just now, but in the future. I am happy to meet noble Lords to discuss the details further, but in view of these commitments I hope that the noble Lord will agree to withdraw the amendment.

**Lord Warner:** I am astonished. The Minister seems to have got over his earlier depression and I am very grateful to him for his response. On that basis, I beg leave to withdraw the amendment.

*Amendment 117 withdrawn.*

### *Clause 52: Interpretation of Chapter*

*Amendments 118 to 120*

*Moved by* ***Lord Nash***

**118:** Clause 52, page 29, line 10, at end insert—

""professional standards" includes standards relating to—

proficiency;

performance;

conduct and ethics;

continuing professional training and development;"

**119:** Clause 52, page 29, leave out lines 11 and 12 and insert—

""register" means a register mentioned in section 36(1) or (1A) (and related expressions are to be read accordingly);

"register of students" means a register mentioned in section 36(1A)(and related expressions are to be read accordingly);"

**120:** Clause 52, page 29, leave out lines 16 and 17 and insert—

""the regulator" has the meaning given by section (Social Work England);"

*Amendments 118 to 120 agreed.*

### *Clause 53: Approval of courses for approved mental health professionals*

*Amendments 121 to 130*

*Moved by* ***Lord Nash***

**121:** Clause 53, page 29, line 30, leave out "of social workers"

**122:** Clause 53, page 29, line 31, leave out "of social workers"

**123:** Clause 53, page 29, line 33, after "include" insert "further"

**124:** Clause 53, page 29, line 39, at end insert—

"( ) make provision about inspections in connection with the approval or continued approval of courses (including provision for the appointment of people to carry out inspections);"

**125:** Clause 53, page 29, line 42, at end insert—

"( ) make provision about appeals against decisions in connection with approval;"

**126:** Clause 53, page 29, line 42, at end insert—

"( ) make provision limiting the regulator's power to approve courses run outside the United Kingdom to those run by institutions approved by the regulator or approved by a person with whom the regulator has made arrangements."

**127:** Clause 53, page 29, line 42, at end insert—

"( ) The provision that may be made under the regulations about the appointment of people to carry out inspections includes provision about—

(a) payments to be made to those appointed;

(b) staff, facilities or other assistance."

**128:** Clause 53, page 29, line 43, leave out from "section 46" to end of line 44 and insert "(3) to (7) apply for the purposes of this section as they apply for the purposes of that section"

**129:** Clause 53, page 30, line 1, leave out subsections (5) to (7)

**130:** Clause 53, transpose Clause 53 to after Clause 40

*Amendments 121 to 130 agreed.*

### *Clause 54: Approval of courses for best interests assessors*

*Amendments 131 to 135*

*Moved by* ***Lord Nash***

**131:** Clause 54, page 30, line 18, leave out "the regulator of social workers" and insert "Social Work England"

**132:** Clause 54, page 30, line 24, leave out "the regulator of social workers" and insert "Social Work England"

**133:** Clause 54, page 30, line 27, leave out "the regulator of social workers" and insert "Social Work England"

**134:** Clause 54, page 30, line 28, leave out from "section 46" to end of line 33 and insert "(3) to (7) of the Children and Social Work Act 2016 apply for the purposes of sub-paragraph (2B) as they apply for the purposes of that section."

**135:** Clause 54, transpose Clause 54 to after Clause 40

*Amendments 131 to 135 agreed.*

### *Clause 59: Extent*

*Amendment 136*

*Moved by* ***Lord Nash***

**136:** Clause 59, page 31, line 34, at end insert—

"( ) Sections 56, 57 and 58 extend to England and Wales and Scotland."

*Amendment 136 agreed.*

*Amendments 137 and 138*

*Moved by* ***Lord Nash***

**137:** After Clause 61, insert the following new Schedule—

*"SCHEDULE*

*SOCIAL WORK ENGLAND*

Status

1_(1) The regulator is not to be regarded—

(a) as a servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

_(2) The members and staff of the regulator are not to be regarded as Crown servants.

Members

2_ The regulator is to consist of—

(a) a chair appointed by the Secretary of State, and

(b) such other members as the Secretary of State may appoint.

Term of office

3_ A member holds and vacates office in accordance with the terms of the member's appointment (subject as follows).

4_ A member may resign by giving written notice to the Secretary of State.

5_ The Secretary of State may by notice in writing remove a member who—

(a) has without reasonable excuse failed to discharge the functions of his or her office, or

(b) in the opinion of the Secretary of State is otherwise unable or unfit to carry out his or her duties.

Remuneration and pensions

6_ The regulator may pay to the members such remuneration, allowances and expenses as the Secretary of State may decide.

7_ If required to do so by the Secretary of State, the regulator must—

(a) pay such pensions or gratuities to or in respect of any member as the Secretary of State may decide;

(b) pay such sums as the Secretary of State may decide towards provision for the payment of pensions or gratuities to or in respect of any member.

Staff

8_(1) The regulator must appoint a person to be chief executive, but may only appoint a person who has been approved by the Secretary of State.

_(2) The chief executive is an employee of the regulator.

_(3) The Secretary of State may appoint the first chief executive.

9_ The regulator may appoint other staff.

10_(1) The regulator's staff may be appointed on such terms, including relating to remuneration and pension arrangements, as the regulator may decide.

_(2) The regulator must obtain the Secretary of State's approval for any terms relating to remuneration or pension arrangements.

Procedure

11_ The regulator may determine its own procedure (including quorum).

12_ No proceeding is invalidated by—

(a) a vacancy in the office of chair, or

(b) a defect in the appointment of any member.

Delegation

13_(1) The regulator may delegate functions to a committee, sub-committee, member or member of staff.

_(2) The functions that may be delegated under sub-paragraph (1)—

(a) include the power conferred by that sub-paragraph, but

(b) do not include any power or duty to make rules.

14_(1) The regulator may delegate functions to any other person if—

(a) the regulator considers that the delegation is likely to lead to an improvement in the exercise of its functions, and

(b) the person has agreed to the terms of the delegation.

_(2) The functions that may be delegated under sub-paragraph (1) do not include—

(a) the power conferred by that sub-paragraph, or

(b) any power or duty to make rules.

_(3) The terms of a delegation under sub-paragraph (1) may include terms requiring payments by the regulator.

15_(1) A function may be delegated under paragraph 13 or 14—

(a) wholly or partly;

(b) generally or only in specified circumstances;

(c) unconditionally or subject to specified conditions.

_(2) A delegation does not prevent the regulator (or the person making the delegation, if different) from exercising the function or making other arrangements for its exercise.

_(3) A delegation does not affect any liability or responsibility of the regulator for the exercise of its functions.

Membership of committees and sub-committees

16_(1) A committee or sub-committee of the regulator may include persons who are not members of the regulator.

_(2) The regulator may pay such remuneration and allowances as the Secretary of State may determine to any person who—

(a) is a member of a committee or sub-committee, but

(b) is not a member or member of staff of the regulator.

Annual reports and accounts

17_ As soon as possible after the end of each financial year, the regulator must send the Secretary of State a report on the exercise of its functions during the year.

18_(1) The regulator must keep proper accounts and proper records in relation to the accounts.

_(2) The regulator must prepare a statement of accounts for each financial year.

_(3) The statement must be in such form as the Secretary of State may direct.

_(4) The regulator must send a copy of the statement to —

(a) the Secretary of State, and

(b) the Comptroller and Auditor General,

within the time period directed by the Secretary of State.

_(5) The Comptroller and Auditor General must—

(a) examine, certify and report on the statement of accounts, and

(b) send a copy of the certified statement and of the report to the Secretary of State as soon as possible.

19_ The Secretary of State must, in respect of each financial year, lay before Parliament a document consisting of—

(a) the annual report sent under paragraph 17, and

(b) the certified statement of accounts and report sent under paragraph 18(5)(b).

20_ In paragraphs 17 to 19 "financial year" means—

(a) the period beginning with the day on which this Schedule comes fully into force and ending with the following 31 March, and

(b) every subsequent period of 12 months ending with 31 March.

Application of seal and evidence

21_ The application of the regulator's seal must be authenticated by the signature of—

(a) a member of the regulator, or

(b) any other person who is authorised (generally or specially) for that purpose.

22_ A document purporting to be duly executed under the seal of the regulator—

(a) is to be received in evidence, and

(b) is to be treated as so executed unless the contrary is shown.

Disqualification

23_ In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert—

"Social Work England."

Freedom of information

24_ In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (other public bodies and offices: general), at the appropriate place insert—

"Social Work England.""

**138:** After Clause 61, insert the following new Schedule—

*"SCHEDULE*

*OVERSIGHTBY THE PROFESSIONAL STANDARDS AUTHORITY FOR HEALTHAND SOCIAL CARE*

1_ The National Health Service Reform and Health Care Professions Act 2002 is amended as follows.

2_ In section 25 (the Professional Standards Authority for Health and Social Care), in subsection (3), after paragraph (gb) (but before the "and" at the end) insert—

"(gc) Social Work England".

3_(1) Section 25A (funding of the Authority) is amended as follows.

_(2) In subsection (1), after "regulatory body" insert ", other than Social Work England,".

_(3) At the end of the heading insert "by bodies other than Social Work England".

4_ After section 25A insert—

"25AA Funding of the Authority by Social Work England

(1) The Secretary of State must by regulations require Social Work England to pay the Authority periodic fees of such amount as the Secretary of State determines in respect of such of the Authority's functions in relation to Social Work England as are specified in the regulations.

(2) A reference in this section to the Authority's functions does not include a reference to its functions under section 26A.

(3) The regulations must, in particular, provide for the method of determining the amount of a fee under the regulations.

(4) Before determining the amount of a fee under the regulations, the Secretary of State must request the Authority to make a proposal as to the amount of funding that it considers it requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations.

(5) The Authority must—

(a) comply with a request under section (4), but

(b) before doing so, consult Social Work England.

(6) Having received a proposal under subsection (5), the Secretary of State may consult Social Work England.

(7) Having taken into account any representations from Social Work England, the Secretary of State must—

(a) make a proposal as to the amount of funding that the Secretary of State considers the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations, and

(b) determine in accordance with the method provided for under subsection (3) the amount of the fee that Social Work England would be required to pay.

(8) The Secretary of State must—

(a) consult the Authority about the proposal under subsection (7)(a) and the determinations under subsection (7)(b), and

(b) consult Social Work England about the determination under subsection (7)(b) of the amount it would be required to pay.

(9) Having taken into account such representations as it receives from consultees, the Secretary of State must—

(a) determine the amount of funding that the Authority requires in order to perform for the period to which the fee would apply such of its functions in relation to Social Work England as are specified in the regulations, and

(b) determine in accordance with the method provided for under subsection (3) the amount of the fee that Social Work England is to be required to pay.

(10) Regulations under this section requiring payment of a fee may make provision—

(a) requiring the fee to be paid within such period as is specified;

(b) requiring interest at such rate as is specified to be paid if the fee is not paid within the period specified under paragraph (a);

(c) for the recovery of unpaid fees or interest.

(11) The regulations may enable the Secretary of State to redetermine the amount of a fee provided for under the regulations, on a request by the Authority or Social Work England or on the Secretary of State's own initiative.

(12) Before making regulations under this section, the Secretary of State must consult—

(a) the Authority,

(b) Social Work England, and

(c) such other persons as the Secretary of State considers appropriate."

5_ In section 25C (appointments to regulatory bodies) is amended as follows, in subsection (7), after "Northern Ireland" insert "or Social Work England".

6_(1) Section 25D (power of regulatory bodies to establish voluntary registers) is amended as follows.

_(2) In subsection (1), after "regulatory body" insert "other than Social Work England".

_(3) In subsection (2), omit paragraph (b) and the "or" before it.

7_ In section 25E (section 25D: interpretation), omit subsections (10) and (11).

8_ In section 25F (establishment of voluntary register: impact assessment), in subsection (3)(c), for ", users of social care in England and users of social work services in England" substitute "and users of social care in England".

9_ In section 25G (power of the Authority to accredit voluntary registers), after subsection (9) insert—

"(10) In this section "regulatory body" does not include Social Work England."

10_ In section 25H (accreditation of voluntary register: impact assessment), in subsection (3)(c), for ", users of social care in England and users of social work services in England" substitute "and users of social care in England".

11_ In section 25I (functions of the Authority in relation to accredited voluntary registers), in subsection (1)(a), omit ", users of social work services in England".

12_(1) Section 26A (powers of Secretary of State and devolved administrations) is amended as follows.

_(2) In subsection (1D), omit paragraph (b).

_(3) For subsection (1E) substitute—

"(1E) In subsection (1D), "unregulated social care worker in England" has the meaning given in section 25E."

13_ In section 27 (regulatory bodies and the Authority), in subsection (2), after "regulatory body" insert "other than Social Work England".

14_ In section 28 (complaints), in subsection (1), after "regulatory body" insert "other than Social Work England".

15_(1) Section 29 (reference to disciplinary cases by the Authority to court) is amended as follows.

_(2) After subsection (2) insert—

"(2A) This section also applies to any steps or decisions which are taken by Social Work England (or any of its committees or officers) in connection with fitness to practise or discipline and which are of a description specified in regulations made by the Secretary of State."

_(3) For subsection (5A) substitute—

"(5A) In relation to something that is a relevant decision as a result of subsection (2A), "the relevant court" means the High Court of Justice in England and Wales."

16_(1) Section 38 (regulations and orders) is amended as follows.

_(2) In subsection (2), after "other than" insert "regulations under 29(2A) or".

_(3) In subsection (3), after "28" insert "or 29(2A)"."

*Amendments 137 and 138 agreed.*

## Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016

*Motion to Regret*

*7.46 pm*

*Moved by* ***Lord Kirkwood of Kirkhope***

That this House regrets that the Government have not, in advance of the entry into force of the Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations 2016 (SI 2016/909), made additional support available to those individuals affected by the benefit cap to find work.

*Relevant document: 9th Report from the Secondary Legislation Scrutiny Committee*

**Lord Kirkwood of Kirkhope (LD):** My Lords, I am delighted to take the House to the much more straightforward issue of social security secondary legislation. The House has been hard at work all afternoon, so I do not want to detain it any longer than I can help, but I hope that this will be an interesting break from the important topics of children and social work that we were considering earlier.

It is my pleasure to move the regret Motion which stands in my name and would amend the Benefit Cap (Housing Benefit and Universal Credit) (Amendment) Regulations to provide that additional support be made available to individuals affected by the benefit cap to find work. I want to acknowledge how hard business managers have worked to find an appropriate time slot for this short but important debate. It was important to have a discussion about the implications of the new measures at roughly the same time as the change was made—which, as colleagues know, happened yesterday. I am grateful for the effort made to make the debate relevant in terms of its timing.

I am grateful too—as I always am, and as the House always should be—for the work that has been done by the Secondary Legislation Scrutiny Committee. I find what it does invaluable; it helps me to understand and interpret legislation that is sometimes complicated even for somebody like me who has done work in a field such as social security. Its report captured my attention and led to this debate.

I acknowledge that there are two important additional exemptions in the regulations. I pay tribute to the noble Baroness, Lady Pitkeathley, and her colleagues on the opposition side and to the Minister for achieving them. If they had not been in these regulations, I would have been tempted to try to annul them altogether. It was obviously a clever trick on the part of the Minister to put in a couple of exemptions so that we could not attack the regulations more fundamentally.

Anyway, that is by way of preamble. We are considering a fourfold increase to 88,000 in the number of households that the cap will now cover. The two significant differences are that it is set at a lower level and it is tiered. Both differences will change the incidence and the effect but not the fact that it will be out-of-work households of a working age that carry the weight of the changes. I cannot miss the opportunity to observe in passing that over the period since 2010 working-age families have carried more of the can than maybe they should. In retrospect we might look back on that and wonder why we did not spread the load more widely. We have had debates about that in the past.

I hope that in the new regime we are now under with the change of Government in the summer, there will be better consideration of these matters and the incidence of cuts falling on working-age families in the future. Certainly, some reassuring things were said by the Prime Minister in her early incarnation. The new Secretary of State is a man with whom I am certainly very happy to do business. He is a sensible man and I have known him a long while. I look forward to working with him in the social security field in future.

I will not labour the objection because the noble Lord, Lord Freud, has heard me on this ad nauseam. I am of the school of thought that benefits should be assessed by way of establishing need; that need should lead to the entitlement. This second raft of supporting mechanisms in our social protection policy is that there is an annual uprating, an undertaking that adjusts rates. We have a perfect system there for adjusting—reducing, increasing, or anything we like—that is well understood and has been in place since the Second World War effectively. It hurts me that we start having vanity projects unleashed by uncontrolled Chancellors of the Exchequer who know nothing about what the Department for Work and Pensions really wants to do, visiting cuts in an unexpected way. For example, these cuts will have the arbitrary outcome of particularly affecting large families, which is no surprise, in high-rent areas, which is not a surprise either. Indeed, the only way in our benefit system that you can get anywhere near £20,000 or £23,000 by way of benefits is by being in one or both of those categories. There is no other way. Jobseeker's allowance pays £73 a week, not £23,000 a year. The general public find that difficult to understand

but we in this House know better. The arbitrary nature of a policy such as the cap being introduced is dangerous and it hurts people.

Turning to the Motion, I worked as hard as I could to see if I could go with the grain of what the Government are trying to do. I agree that of the three objectives in this policy, getting more people into work is something that we all favour, but the so-called work incentives deployed in this measure are threatening to most people. They will continue to be threatening unless these people can be assured—as can we as policymakers—that they are being given a fair shot at getting into employment. Now, phase 1 of the cap substantially had its incidence in London. There is a labour market in London that is as vibrant as any in the United Kingdom. The tiered effect of phase 2 of the cap will produce difficulties all across the United Kingdom in varying labour market conditions. People will find it very much harder in phase 2 to respond to the exhortation that work incentives are being increased. It is very difficult for people to do that without substantial support and that is absent at the moment, so far as I am concerned. This Motion merely says, if I can put it this way, that it is not safe to introduce this yet—not until we get better provision made and help people into work.

There are three other things I will briefly canvass. Obviously, one of the other objectives in this is trying to persuade the Government—I hope the Minister will reflect on this—that it is madness to put this benefit cap into universal credit. None of the figures we are talking about this evening draws any experience from universal credit yet because it is too early in its rollout. However, putting the clauses of the benefit cap into universal credit will make it even harder to get people to understand what universal credit is trying to do. I do not think that it is too late to do that, although these regulations go through the motions of it. I just hope that the ministerial team will reflect carefully on opportunities in future under the new Government to try to strip out benefit capping from universal credit when it is properly introduced.

On the Government's claims of success, I do not know if the Minister saw the IFS observation note published on Sunday, but there is some evidence of movement. However, the Government are vastly over-claiming the success of this policy. The IFS says that in 2015-16, phase 1 of the benefit cap saved directly some £65 million. In 2016-17, it expects it to directly save another £100 million on top of that. Yet that has been covered off by people claiming discretionary housing payments, in 2015-16 for £26,000 and in 2016-17 for the £20,000 cap. I am sorry—I did not make that very clear. The savings of £65 million and £100 million are, the IFS estimates, some 1% of the £12,000 million to be saved over five years, so it is not a huge amount of money.

The point I was garbling there is that the £65 million saving must be offset by £25 million in DHP awards in 2015-16. We now know that in phase 1, 40% of people subjected to the cap made successful applications for discretionary housing payments. It comes to the point where you really need to ask yourself whether the savings made, when measured against the discretionary housing payments paid at the moment, are worth the effort. The National Audit Office and Comptroller and Auditor-General, when they get round to it in due time once this whole policy area settles down, will start asking themselves that question: whether the totality of the spend to try to handle some of the transitional arrangements and mitigate some of the effects does not make the policy less than worth doing because it so affects the money actually saved.

I noticed a Motion that went through the House just after the summer where £585 million went to Northern Ireland for mitigating effects. That is for a community of 1.8 million people. When you look at the amount of discretionary money and some of the block grant Scotland is using—principally at the moment to mitigate the bedroom tax changes, but no doubt the Scottish Government will think about using their own money to mitigate some of the cuts under this policy too—the totality of public spend begins to be questionable. I am not sure that it can be claimed that this is a clear success in terms of making a significant saving to the public purse.

My next point, briefly, is that the evaluation is weak. I know that the Minister is very hot—and rightly so—on the research dished up for his consideration. I ask him to look at that again. There are dynamic effects, which I understand are difficult to measure. He has said that many times before. The Ipsos MORI survey was done with 490 people who had been subjected to phase 1 of the cap. Those 490 self-selected respondents do not seem to me to be a core collective statistical analysis of the experience across the whole cohort of those subjected to the cap. For example, I do not think that there has been any attempt at all to follow up offload destinations. There are people who just left and stopped claiming benefit. They have disappeared and we need to look at that very carefully indeed.

*8 pm*

Finally, I turn to the kind of thing that the Motion would ask the Government to do. The chances are that we do not know for certain what people will do and how they will respond. However, it is clear that there are people able to claim exemptions by applying for working tax credits. Any claim that is open is an exemption. There have been a lot of successful disability applications which produced exemptions. I think that there are a lot of households with overcrowding but we have not been able to quantify that. We need multiagency support for all affected to try to make this a safer policy for getting people into work. We need Jobcentre Plus involvement to provide bespoke schemes for the households involved. We need to attract more employer involvement in trying to get people into work. We need to work much harder on the situation of these new families being sent letters and then left to wonder what is going on. We need much, much more robust support to make sure that they have a chance. As the impact assessment for the Bill said:

> "People who do the right thing and move into work are not affected by the cap—creating a clear incentive to move into employment".

That is something the Government want to do. This Motion seeks help for additional support to help those people do just that. I beg to move.

**Baroness Lister of Burtersett (Lab):** My Lords, I thank the noble Lord, Lord Kirkwood of Kirkhope, who is in practice my noble friend on these issues,

[Baroness Lister of Burtersett]

for praying against the benefit cap regulations. The first-year review of the cap unsurprisingly found that caring responsibilities, especially for young children, represented one of the main barriers facing capped families looking for work. According to the equality analysis, 16% of existing capped households—more than 3,000—contain a child aged under one. Of these, more than 2,000 are headed by a lone parent and the great majority of those are women. Yet even under the current punitive regime this group is not expected to seek work when their youngest child is so young, so what is the justification for including them in the cap? Surely, on the logic of the High Court judgment that led to the welcome exclusion of carers in these regulations, as we have heard, those caring for infants should also be excluded. The equality analysis indicates that the number of households containing a child aged under one is now of course likely to increase. Can the Minister give an estimate of how great this increase is likely to be?

The new cap will affect a much wider group of families over a wider geographical area. In my own region of the east Midlands, the number of households affected is expected to increase from 800 to 5,000—a rise from 4% to 11% of those affected nationally. In order to avoid the risk of the arbitrary effects to which the noble Lord, Lord Kirkwood, referred, the IFS suggests:

"It would be sensible for the government to set out a clear vision of which families it thinks receive excessive amounts of benefits and why".

I look forward to the Minister enlightening us.

It still beats me how, as the Government claim, it can be in the best interests of these children for them to be driven further into poverty in the name of some theoretical future life chances, especially when the earlier IFS evaluation showed that only a tiny fraction of those affected had moved into paid work. Its more recent analysis suggests that it is not likely to be that different now. Moreover, there is evidence to indicate that cutting benefits can be counterproductive because impoverishment reduces job-seeking capacities. If all one's energy has to go into getting by, that does not leave much over for presenting oneself as a suitable job applicant to employers.

As I cited during the passage of the Bill, according to last year's Supreme Court judgment the department is misinterpreting the best interests requirement when it argues on the basis of the theoretical best interests of the generality of children rather than the actual best interests of children whose parents' income is driven below what Parliament has deemed necessary to meet their needs. I very much concur with what the noble Lord, Lord Kirkwood, said about the basic principle of this cap, which I am opposed to.

Both the UN Committee on Economic, Social and Cultural Rights and the UN Committee on the Rights of the Child have recently expressed deep concern about the impact of the reductions in the cap. This is also referred to in the report just published by the Committee on the Rights of Persons with Disabilities. The fears of these UN committees are likely to be borne out given the recent warnings of, for example, the Chartered Institute of Housing. It is quite clear from the revised impact assessment that children are still disproportionately affected. In his Statement on the recent UNCRC concluding observations, the Minister for Vulnerable Children and Families called on government colleagues to reflect on the committee's recommendations,

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

There is no evidence of the voice of the child here.

Despite being pressed a number of times during the passage of the Bill, there is also still no mention in the revised impact assessment of the application of the famous family test. The best that we got during the Bill was a letter from the Minister, which turned up in my junk email folder, assuring us:

"The Government has fully considered the family test criteria as an integral part of the policy development process".

This is not how the DWP advises other government departments to present the outcome of the application of the family test. It simply is not good enough. Perhaps the Minister prefers not to spell out the impact on families of a policy that the impact assessment shows will disproportionately hit children and lone mothers.

Returning specifically to the impact on children's rights, I draw attention here to the Equality and Human Rights Commission's note on priority issues for implementing the concluding observations of the UNCRC. It would,

"highlight, for an urgent response, the recommendation of the UN CRC for the UK to '[c]onduct a comprehensive assessment of the cumulative impact of the full range of social security and tax credit reforms introduced between 2010 and 2016 on children', and to revise the reforms where necessary to ensure the best interests of the child are"—

I stress are—"a primary consideration". I would welcome the Minister's response.

**Lord Best (CB):** My Lords, on the face of it withdrawing help from very poor people, which is the effect of lowering the overall benefit cap, seems extremely harsh. It has two justifications, as I understand it, in addition to the obvious aim of saving money and reducing the national deficit. First, it is hoped that it will fiercely encourage those affected to seek out a job, since that would exempt them from the constraints of the cap. Secondly, the effect of the cap reducing support in housing benefit could be to persuade landlords to reduce rents. It seems that neither of these hoped-for outcomes will be very successful.

On the jobs front, the previous imposition of a benefits cap seems to have pushed less than a quarter of those affected into a job, leaving the great majority to take the hit in a straightforward reduction of their standard of living. The noble Lord, Lord Kirkwood, and the noble Baroness, Lady Lister, have spelled out the obstacles to the new measure getting people into work.

On the housing side, could the lowering of the cap achieve savings to the Government without hardship to those whose benefit is cut by coercing private landlords to trim their rents? Landlords who concentrate on tenants who need housing benefit would, it is argued, have to settle for a lower rent if tenants cannot pay, otherwise they would be faced with an empty property.

Of course I understand that the Department for Work and Pensions, propelled by the pressure of the Treasury, wants to reduce the housing benefit bill which, frustratingly, keeps rising as rents rise, but such is the scarcity of inexpensive homes to rent in London, and increasingly throughout the country, that private landlords do not cut rents when housing benefit tenants are given less to spend on rent. Instead, landlords simply stop letting their properties to people in receipt of housing benefit. More than three-quarters of private landlords will not consider housing anyone in receipt of HB, and those who are already letting to such tenants are increasingly unlikely to renew assured shorthold tenancies when they conclude after six months or a year.

The new cap is estimated by the Chartered Institute of Housing to hit 116,000 families containing 319,000 children. It comes on top of the local housing allowance caps and freezes, which are biting already. Although the impact of the new measure is greatest in London, despite the higher level of the cap there, all areas are affected. IFS figures show that families with three children face the most severe cuts. Half of them are facing a gap between their housing benefit and their rent of more than £100 per week. No private landlord is going to reduce rents by anything approaching that level.

So, in housing terms, the most likely impact of the new measure is the gradual elimination of privately rented accommodation for households which, for a host of reasons, are not in employment. Although tenants may try to make up the shortfall between their housing benefit and their rent by drawing on loans, help from friends and using up resources provided for food, heating et cetera, this is untenable for a sustained period. Debts and arrears are highly likely, and private landlords can see this coming. It is safer and more profitable to let to tenants who need no HB support.

What follows is likely to be an increase in homelessness. Housing associations and councils cannot take in all those rejected by the private rented sector. I know the Minister has done sterling work in extracting funding from the Treasury for discretionary housing payments to offset the impact of earlier benefit cuts. His efforts have reduced the deficit-cutting savings for the Government, but they are not a stable way to fend off homelessness in the face of continuing benefit cuts.

I will soon have the honour of piloting the Homelessness Reduction Bill through your Lordships' House if and when it completes its stages in the other place. It will be a really helpful measure to prevent homelessness and provide more relief for those who face homelessness, and I am delighted that the Government are supporting it. However, this legislation, if it completes its stages in the other place and meets with approval in your Lordships' House, cannot swiftly turn the tide and conjure up more rented homes within the reach of those who receive housing benefit. Market forces dictate that, if housing benefit does not cover the rent, private landlords will simply not let to these households.

I agree with the noble Lord, Lord Kirkwood of Kirkhope, that additional support to help those hit by the latest cap get a job is definitely needed before inflicting upon them a very significant cut in their income. Locating and assisting those affected in the private rented sector may not be easy, but several thousand council and housing association tenants are also affected. Councils which focus on these tenants are to be commended. Housing associations trying to help tenants with skills training need to be informed by their local councils of which tenants will be affected by the new benefit cap. They can then target support with financial advice and training on those people. The National Housing Federation points out that not all councils are sharing these data with their local housing associations. Support from the Minister in making sure this data-sharing happens would be very valuable.

*8.15 pm*

However, more fundamentally, I argue that Ministers should consider whether the likely unintended consequences of greater homelessness for those outside the jobs market whose landlords do not reduce rent levels do not necessitate a pause in these cumulative housing benefit cuts. The Government are in earnest in seeking to address the massive problem of undersupply of the homes we need but, until housing production catches up with demand to a greater extent than today, it simply will not work to deprive tenants of the means to pay for a roof over their heads.

I support this Motion of Regret and express considerable regret at a policy that goes well beyond incentivising work. It will not only have painful consequences for the tenants affected but thwart wider housing policies for easing homelessness.

**The Lord Bishop of Leeds:** My Lords, we have heard a number of impressive figures and statistics this evening. It seems to me that the principle underlying all this is that you can save money with one hand but you will pay it out with another. According to End Child Poverty statistics released this month, we have 3.5 million children living in poverty in the United Kingdom in the 21st century. In some regions, up to 47% of children are living in poverty. In my own diocese, in the Bradford local authority area, 32.7% of children are living in poverty after housing costs. The national average is 29%. In Leeds Central, it is 41.8%. If children are living in housing and food poverty—as we know they are from food banks and all the other stuff we see on the ground in our cities, towns and rural areas—then we will end up paying out through the National Health Service and in other ways for the consequences of what children do not have at present.

Could the Government see their way to reducing the impact of this change on children by excluding children's benefits from the cap, so that families always receive a basic income to spend on their children's needs? Secondly, could the Government reverse the reductions to in-work allowances under universal credit in order to incentivise moving into work through the provision of better in-work financial support, recognising that much of the poverty we see around us involves those who are in work? I support the Motion to Regret.

**Lord Shipley (LD):** My Lords, I thank my noble friend Lord Kirkwood of Kirkhope for moving this regret Motion. He has raised a very specific issue

[LORD SHIPLEY]
about the need for additional support to be made available to help those affected by the cap to find work. But, as we have heard, the issue is broader than this. The Government need to get to the heart of the problem, which previous speakers have identified, which is that they have not been building enough new homes, and as a consequence prices have been rising steeply, whether for owner occupation or for rent.

Crucially, the Government's emphasis on subsidising owner occupation has left the social rented sector seriously short of funding and therefore of supply. Those who cannot afford to buy are increasingly forced into the private rented sector, with its high rents in most parts of the country. We heard from the noble Lord, Lord Best, about the implications for the private rented sector and the likelihood that the availability of homes in the private rented sector will decline for those who are on housing benefit.

Building more homes will help to hold down rents, which in return can reduce the Government's revenue costs in terms of housing benefit. I understand that there is to be a White Paper on housing supply shortly. That is welcome, but can the Minister confirm whether the purpose of that White Paper is to address the lack of social rented accommodation? Might it also address the absurdity of calling a home "affordable" when for many people such homes are nothing of the kind?

Meanwhile, the impact on homelessness of lowering the cap could be severe. The Government are already committed, as we have heard, to supporting the Homelessness Reduction Bill, but their support for the Bill seems to sit oddly with this cap, which will actually increase homelessness. We have heard a whole set of disturbing figures, from the right reverend Prelate the Bishop of Leeds and others. I understand that Shelter has estimated that there will be more than 120,000 children in temporary accommodation at Christmas. I find that disturbing. Also disturbing is the fact that since the original cap was introduced, around 70% of those affected have not found work. So doubling the number subject to the cap and worsening it for those already subject to it means that many more people who are already poor are going to be made poorer.

When the Prime Minister took office, she declared that his was a Government for all the people. But this is a dubious claim when poor people are being made poorer. The Government must show that they are prepared to invest further in helping people back into work, at decent rates of pay, thus overcoming the barriers so many can face daily in their attempts to do so. If the Government do not do that, they are simply widening social and financial inequalities in our country, which is unacceptable.

**The Earl of Listowel (CB):** My Lords, I support this Motion to Regret, over three issues in particular. First, the noble Baroness, Lady Lister, referred to the 17% of mothers who have a child under the age of one. I would add pregnant mothers to that. Can they not be exempted, or can that at least be looked at? The Maternal Mental Health Alliance report published last year highlighted to all of us the terrible bane of post-natal and pre-natal depression and the risk that if a mother's mental health deteriorates, her relationship with her young infant is damaged. This costs society huge amounts in the long term.

My second concern is about more children being taken into care. We were reminded earlier by the noble Baroness, Lady Lister, that most children coming into care come from poverty. Has the Minister examined this policy to look at whether it increases the risk of children being taken into care?

Thirdly, the noble Lord, Lord Shipley, alluded to the fact that we face having 120,000 children in Britain in temporary accommodation this Christmas. There has been an 18% rise in the past year in the use of bed and breakfast accommodation for such families. I followed a woman's journey through temporary accommodation last year. First, she was in a domestic refuge and then in a very small single room with her 16 year-old daughter and one year-old child. She was distressed by that, but most distressed by the uncertainty of where she would go next. She was evicted from there to another, even smaller room and then there was the fear that she might be moved away from London, as far afield as Manchester, where she would know no one; she was in despair about this situation. Finally there was resolution. She has, at least for now, a larger and quite comfortable place for the next six months, for which she is so grateful. But one cannot overestimate the impact on the mental health of families and children of being put into homeless temporary accommodation.

I recognise that the Minister may be limited in how far he can help the House today, but I hope he will take very much to heart the concerns that have been raised. I share my noble friend Lord Best's gratitude to the Government for supporting the current homelessness legislation, the Homelessness Reduction Bill. I look forward to the White Paper on housing supply, and to the Minister's response.

**Baroness Bakewell of Hardington Mandeville (LD):** My Lords, I support my noble friend Lord Kirkwood of Kirkhope and thank him for raising this important topic. As we have heard, the original rationale for the benefit cap was that it would give people an incentive to seek work, yet evidence shows that only 30% of those who have been hit by the cap left the benefit cap as a result of finding work.

A lot of the support that the Government claim will help people into work clearly is not there. For example, they made great play of how the troubled families programme would provide the answer, but evidence from the National Institute of Economic and Social Research recently showed that there is no evidence it has had the impact that the Government intended.

Prior to being reduced, the benefit cap at its current level mostly affected large families in areas with high rents, as my noble friend said. The new lower thresholds mean that some single-person households are likely to be hit by the cap for the first time, and there is considerable concern from Crisis and others that by affecting a far greater number of households the cap will have a more significant impact on homelessness. As the noble Lord, Lord Best, illustrated, private landlords are likely to stop taking families who are currently in receipt of benefits.

Analysis by Crisis examining the cap in relation to London housing allowance rates shows that the new cap will affect single jobseekers in most parts of inner London. Existing single claimants in the work-related activity group for employment and support allowance are likely to be affected in areas of inner and outer London, as well as in high-rent areas such as Guildford and Oxford. This is because they will still be eligible for the work-related activity component, which is due to be removed for future claimants but will still be subject to the cap.

The Government have acknowledged that these reduced benefit thresholds are lower than average earnings, arguing that the policy will encourage more claimants into work. However, to date the benefit cap has not performed well enough in encouraging people into work to justify that. According to the Government's own evaluation, just one in 10 of people affected by the cap in February 2014 had found enough work to become unaffected by the cap by the summer of the same year. The vast majority, 78%, were still capped, including a significant majority with barriers to employment, including poor health and/or skills gaps. All the figures that I am quoting today come from the DWP's own statistics.

Households that are capped have responded by cutting back on household essentials, including skipping meals, while a significant proportion—45% in summer 2014—were in rent arrears. As we heard from the noble Lord, Lord Best, people in rent arrears are unlikely to be allowed to continue their accommodation with private landlords. Many find that they cannot move house to reduce their housing costs because they are already living in the cheapest available accommodation in their area.

In recent months the Government have set out a clear agenda on homelessness prevention, which is to be welcomed. As we have heard, this includes a new funding programme and support for the Homelessness Reduction Bill, the Private Member's Bill that is about to go into Committee in the other place. The lowering of the benefit cap risks undermining this important agenda by putting newly capped households at risk of homelessness.

We heard from my noble friend Lord Shipley about the effect that a lack of housebuilding is having on homelessness. The Bill includes a new duty on other public bodies to make referrals to local authority homelessness teams if they are working with people who are homeless or at risk of homelessness. There are already some examples of good practice from local authorities in response to the existing benefit cap in joining up employment support and housing teams to help capped households into work. This should result in their coming off the cap. It is to be hoped that the new duty to refer in the Homelessness Reduction Bill will promote even more collaborative working between different local authority departments to prevent capped households reaching crisis point.

We heard from the noble Baroness, Lady Lister, and the right reverend Prelate the Bishop of Leeds of the terrible plight of children: 800 families affected rising to 5,000. That is a terrible increase in the number of children who will be affected. Where is the family test in this policy, or the voice of the child?

*8.30 pm*

Last weekend, I looked after my granddaughter, who is two. The thought of her being in temporary accommodation this Christmas is chilling. We cannot let this happen to any child. In the current economic climate post Brexit, we anticipate increased food prices in the supermarket. This will impact on both those in work at the lower end of the income scale and those hit by the benefit cap, where the effects will bite most severely. This will result in large queues at food banks. It will also affect those who donate to food banks, as they find that they have less spare money in their pockets.

If the Government continue to pursue this blanket policy without dramatically increasing support to enable those affected to find employment, it will be cruel and will demonstrate that their policy is all about public relations, not supporting a decent welfare system that is fair to both claimants and the taxpayer. I fully support my noble friend Lord Kirkwood and look forward to the Minister's response.

*8.30 pm*

**Baroness Sherlock (Lab):** My Lords, this has been an interesting debate, and I am grateful to the noble Lord, Lord Kirkwood, for his introduction to it and to all noble Lords who have contributed.

First, the good news. I am certainly glad to welcome the good bit of the regulations. As one of a number of concessions won by hard work in this House across the Benches, the regulations exempt from the benefit cap people claiming guardian's allowance, carer's allowance and the carer's element of universal credit.

I have a couple of practical questions for the Minister before I move on. I understand that, because the regulations took effect yesterday, anyone in receipt of one of those benefits will be automatically exempted from the cap. That means that any such person who is already capped will have it automatically lifted, and their next payment will reflect that fact. Similarly, anyone whose case is flagged up as otherwise being caught by the new lower cap but who is in receipt of, or entitled to, one of those benefits will automatically be exempt. Can the Minister confirm that that automatic exemption is the case, and that the claimant will not have to do anything to ensure that they are exempted when they should be? Will he also confirm that his department has communicated with those claimants to let them know what is happening, so that they will understand the change in their circumstances?

On to the bad news. I will not rehearse the arguments made eloquently by many noble Lords about the impact on housing and homelessness—points made very well by the noble Lords, Lord Best and Lord Shipley—and on children, a point made by my noble friend Lady Lister and the right reverend Prelate the Bishop of Leeds. His predecessor the Bishop of Ripon and Leeds and I made an attempt right at the beginning to exempt child benefit from the cap. Sadly, we were unsuccessful, but I am glad to see the right reverend Prelate keeping up a fine tradition of speaking up for the children of Leeds; I hope that one day, he will not have to. If his sermons are as commendable, pointed and brief as his speeches here, may people flock to his cathedral in time to come.

[Baroness Sherlock]

As has been pointed out, the cap will change significantly. We heard about the large number of people who have been brought into it, but there is also the size of the losses. Households already capped could lose another £3,000 a year in London, or £6,000 elsewhere. The Government estimate that newly capped households will lose an average of £2,000 a year. The profile will change dramatically. No longer can Ministers pretend that the problem is people living in Mayfair or having 17 children; the problem will now be right across the country, a point made by the noble Lord, Lord Kirkwood. That was never really the issue, but in future, just 22% of affected households will be in London, whereas the figure had been 42%.

For me, the telling point is that in the north-east, where I live, the number of households affected will jump from 600 to 4,000. There are not that many very expensive properties in the north-east—certainly not that benefits pay for. This is now being spread right across the country. Nor can the Minister complain that it is just about large families. Under the new cap, a single mum with two young children sharing a room will be capped if she is living, not in Mayfair, but in 19% of areas in the country, including Basingstoke or Reading. If those two children are in different rooms, we are talking about a third of the areas in England. This is becoming really significant.

What is it about? Is it about saving money? Points were made by a number of noble Lords. I have been through the impact assessment again, and it is now clear that the savings from these regulations will be £540 million in total over five years. Over that period the Government will spend £870 million in discretionary housing payments. Clearly, not all of that will go on the benefit cap. It also has to cover the impact of the bedroom tax, LHA cuts and the general misery caused by the Government's social security policy. In the current year, more than a quarter of DHP money went on the benefit cap victims, and we know that the number will go up significantly—more than threefold. Can the Minister tell us how much the Government expect to save from these regulations after deducting an appropriate proportion of the costs of discretionary housing payment money?

We have heard that the options for somebody who is capped are to accept the cut, move somewhere cheaper or get a job for at least 16 hours a week. Let me run through those very briefly. These are cash cuts and they come in overnight. If a family faces an annual benefit cut of £6,000 a year, can the Minister say whether that means it is possible that someone's housing benefit could be cut by £115 a week from one housing benefit payment to the next? If that is the case, how could anyone absorb that kind of cut?

Another option is to move somewhere cheaper. But where can they move to? The cap spreads right across the country, so what will happen? There are no cheaper places to move to, and the only reason for the handful of places that are cheaper is that they are the kind of areas where there are no jobs and there is no transport to get there even if there were jobs. What is the point of sending people to live there?

The third option is to get a job. The Secretary of State for Work and Pensions, Damian Green, has said that the benefit cap is a real success. Based on the fact that the IFS found only 5% of people in the past who had got a job, the Minister may have to work on defining his terms. Let us look at what happens now. The Government think that if they cut it far enough, eventually people will get a job, but let us see who is being affected. I am particularly concerned about the effect on parents with young children. The benefit cap has already particularly affected single parents with very young kids. Most of those capped have a child aged nought to four. DWP statistics show that 11% of households affected by the current cap are single parents with a child under one. I want to look at that a bit more.

Let us imagine a single mother with young twins who are six months old, living in Basingstoke on basic out-of-work benefits. Let us call her Susan. Susan will be hit by this new cap. If she cannot find a cheaper flat—and she will not, because the housing benefit limits have been pushed down so far that she is already at rock bottom—the only way to escape the cap is to work 16 hours a week. The Government have been getting tougher and tougher on conditionality on single parents, but even they do not require parents of babies to work If you have children of that age you would not be required by the DWP to work.

Even if Susan wanted to leave the babies and go out to work, she would have to find a suitable job. She is not eligible for any of the job search programmes because she is not required to work. I understand that government guidelines to local authorities on the implementation of the benefit cap is that someone who is already capped and will be hit again by the lower cap will be entitled to 40 minutes in total with a work coach to help them to find a job. Can the Minister tell me if that is correct? What help will be provided to a single parent being capped for the first time?

Secondly, where will Susan get childcare from to be able to go out to work? A survey just out from the Family and Childcare Trust found a huge problem of insufficient childcare in many local authority areas. Fewer than half of local authorities in Great Britain reported having sufficient childcare for nought to two year-olds. The Minister will probably talk about the Government's free childcare offer, but let us remember that that is only for three and four year-olds. It is only 15 hours a week which is not enough to enable parents to get the kids to a nursery, get to a job for 16 hours and back again. The much-vaunted extension of that will not come until next April whereas the cap is already in place. Evidence shows that there is not enough childcare provision now, never mind when it is extended.

Parents like Susan, with children under three, have no entitlement to free childcare at all. They could claim help within tax credits or universal credit, but the limit of how much you can get is so small now, as it has not been raised for so long, that it falls way short of actual childcare costs. The Family and Childcare Trust says,

"there are 11 local authorities where the average cost of part-time childcare exceeds",

the working tax support cap completely,

"leaving the poorest working parents having to pay an average of",

£81 a week out of their own pocket. Where is Susan going to get that kind of money? Care for babies is especially expensive. Even if she could find somewhere suitable and a suitable job, she may not even be able to afford the deposit on the first month's nursery fees, which are usually required upfront. Can the Minister at least assure the House that any parent of young children, who has to take a job because they are capped, can claim the full costs of the deposit for childcare from the flexible support fund his department operates? I ask that because Gingerbread has been getting reports that job centres do not want to use this fund, which is meant to remove barriers to work for childcare, even though childcare is a really obvious barrier. Can he reassure us on that point?

However, let us remember that these are parents whom the DWP does not normally require to work. The only reason that that mum is having to go to work—despite the fact she has only two kids, does not live in an expensive area and her only income is basic benefits and tax credits—is because her rent, as the noble Lord, Lord Best, has said, is at a level where she cannot reasonably pay it without help from benefits. There are Susans all over the country.

As the IFS has pointed out:

"It is possible for the benefit cap to quickly affect many more out-of-work families in an area, once its level falls below the sum of the HB cap in that area for the family type in question and the other (nationally-set) benefit entitlements".

Once it happens, all those families are going to be chasing the handful of cheaper accommodation and none of them will be able to cope. What do the Government think will happen? Where are these families going to live? The point made by the noble Lord, Lord Best, is that this is driven primarily by a housing crisis. Is not the problem that the Government have failed to invest in housing and are therefore simply trying effectively to shift the problem on to the poor, who are the victims of the rent rise which they have not been able to address?

I am sure the Minister does not want to see parents of young children plunged into crisis. He knows that discretionary housing payments cannot be relied upon because they are discretionary and councils have too many demands on them for help. At the very least, will the Minister pledge to look at how his department can protect parents of young children from the impact of the reduction in the cap? I very much back my noble friend Lady Lister who is pressing the Government to address the question of the family test. Perhaps in doing that, the Minister could also guarantee to report back to Parliament on the impact of this change on families with young children. That is the very least we can expect.

**The Minister of State, Department for Work and Pensions (Lord Freud) (Con):** My Lords, this Government believe that those out of work should not receive more in benefits than many working families are able to earn. We introduced a benefit cap to encourage people to find work and that is exactly what has happened. The new benefit cap levels continue to provide a clear incentive to work, helping to reduce long-term welfare dependency and ensuring fairness for working households.

Since the original benefit cap was introduced in April 2013, 23,500 capped households have found work. Evaluation has found—this is in response to the query of the noble Baroness, Lady Bakewell—that capped households are 41% more likely to go into work than similar uncapped households, and that 38% of those capped said they were doing more to find work. A number of noble Lords have argued that the benefit cap is flawed, but it was a manifesto commitment and was extensively debated in this House and in another House.

One aspect that I would like to point out to noble Lords is that there has been a culture change around the importance of going to work. Whatever particular policy has been driving that is difficult to assess, but the figures are astonishingly dramatic. The number of children in workless households now stands at 1.35 million. That is the lowest ever since these statistics started to be collected in 1996. It compares well with the figure at the height of the boom: it is more than 400,000 lower. It was 1.79 million in 2008. It is much lower—almost 1 million lower than it was in 1997.

So there has been a dramatic change in attitudes. We see it in various statistics, including the number of people in social housing now going back to work, which they never did. So there is a structural change. I do not pin it directly on this policy. But I do say that there seems to have been a real change, and that is one of the aspects of it.

The Motion of the noble Lord, Lord Kirkwood, expresses concern that we have not,

"made additional support available to those individuals affected by the benefit cap to find work".

Actually, there is quite a lot of evidence that the success that the cap has had in helping people into work is partly a reflection of the strong support offer we have in place in both jobcentres and local authorities, which we continue to improve. We have contacted claimants potentially affected by the cap well in advance, giving them an idea what the impact might be on their household income and offering them support to adjust their circumstances. We have also ensured that jobcentres and local authorities are equipped and funded to provide that support.

*8.45 pm*

I shall set out the measures we have put in place. From May, an online benefit cap calculator has been available to show claimants the potential impact on their income. The department issued notifications to claimants identified as potentially affected by this change in May and early June this year, to give them time to look for work or make other changes to prepare for the cap. We sent a further communication in September. Universal credit and JSA claimants in full conditionality will have discussed the impacts of benefit capping with their work coach. Where claimants have not responded, DWP and many local authorities have made further efforts to contact them. Local authorities have information on which of their residents are most likely to be impacted and have contacted many of them, often as part of ongoing contact between local authorities and some of their harder-to-help residents.

[LORD FREUD]

All claimants responding to notifications or contact can receive a variety of support measures. From their local authority they can receive budgeting support, including advice on the impact of the cap as well as on household budgeting, and support with housing costs. This includes advice on how to manage or reduce housing costs, potentially including the option of moving, as well as consideration of discretionary housing payments in appropriate cases. From Jobcentre Plus they can receive advice on gaining employment, including employment provision and specialist training via the Flexible Support Fund and advice and some funding for childcare—which I assure the noble Baroness the Flexible Support Fund can offer. And with universal credit, of course, the figure is now standing at 85% of the costs.

We have set aside extra funding to cover the additional support that jobcentres and local authorities are providing. In this financial year, jobcentres have received £4.8 million in respect of this support, a further £5 million to cover specialist training from the Flexible Support Fund, and £1.4 million to support additional co-location of jobcentre and local authority staff in support of this initiative. Local authorities received £14.7 million New Burdens funding in July 2016.

To ensure that local authorities are able to protect the most vulnerable and support households adjusting to reforms, the Government have committed, as the noble Baroness, Lady Sherlock, pointed out, to provide £870 million in total for discretionary housing payments over the next five years. The DHP funding linked to the benefit cap increased by £15 million in 2016-17—up from £25 million to £40 million. For 2017-18, overall DHP funding is increasing by a further £35 million to help those affected by all welfare reforms. I do not have broken-down figures for the different components and we have not yet provided them to local authorities.

Discretionary housing payments are used to ease the transition for households moving into work or adjusting to the cap and, as the name suggests, are at the discretion of the local authority, although a comprehensive guidance manual has been produced. The noble Lord, Lord Kirkwood, made a point about matching the payments against savings. Discretionary housing payments are usually transitional and they help move people from one circumstance to the next.

On the family test, the noble Baroness, Lady Lister, acknowledged that the question was asked and answered during the passage of the Bill. As I have said, it is not in the interests of children to grow up in workless families and there is a lot of evidence on that. In response to the noble Lord, Lord Best, on the homelessness issue, the evaluation of the current cap showed very little, if any, impact on homelessness as a direct result. The households we are discussing are actually receiving more in benefits than many working people are able to earn. In response to the noble Lord, Lord Shipley, we do expect that landlords will continue to let a full range of properties to people on benefits, providing that the accommodation is affordable to that household. We are also working closely with DCLG on this.

The noble Lord, Lord Best, made a point about data sharing. This is absolutely critical. It is the key to joining up support services and is one of the factors that we are researching very actively in our universal support programme. The noble Baroness, Lady Lister, was concerned about including women with young children. We found that lone parents affected by the cap were 51% more likely to go into work than similar, uncapped lone parents. The noble Baroness, Lady Sherlock, made a point about double-capped cases. There could be a very small proportion of households affected by the lower cap who have already been affected before. As the noble Baroness said, we have put in place an additional 40-minute work coach intervention, on top of all the other support offers, to further help the claimant avoid capping. This additional support reflects the Government's view that the preferred outcome for these claimants is employment rather than moving.

The noble Baroness also asked a question about carer's allowance. The new exemptions apply from 7 November. We run scans every month of all the relevant IT systems and use the information to calculate the overall amount of benefit in payment. Claimants in receipt of a benefit which will exempt them from the cap, including carer's allowance, the carer's element of universal credit and guardian's allowance are excluded at source and are therefore not capped. They are excluded at source so they do not have an issue. There is no point in telling someone that nothing is going to happen to them.

**Baroness Sherlock:** If you introduce this, there will be a change for somebody who is already capped; or they may have previously been told and made a decision not to make an application because they knew of the impact of the cap. I presume the Government have communicated at some point. It was a serious point.

**Lord Freud:** I am sorry. I did not mean not to be serious. My best understanding of this is that where someone has been capped and will no longer be capped then we will inform them of the change. If that is not the case, I will write to the noble Baroness; if it is, I will not. However, I am pretty sure that it is the case.

To pick up on the concern expressed by the noble Lord, Lord Kirkwood, regarding the point made by the Secondary Legislation Scrutiny Committee, the committee wrote to my colleague the Minister for Welfare Delivery to express concern about the equality analysis. I imagine that the noble Lord saw that letter. Ministers fully considered the equality analysis at the same time as the regulations were made but there was simply a delay in publishing it. Perhaps noble Lords can cast their minds back to the peculiar period in our history following the June referendum, when the machinery of government perhaps was not working quite as smooth as it usually—or always—is.

On evaluation and the Ipsos MORI survey that the noble Lord talked about, the numbers came about because it was a longitudinal survey to understand what was happening; a lot of different levels of analysis went on, which looked at different outcomes, some of which were done on a quantitative basis, others on a qualitative basis; that was a qualitative one. We are

committed to go on evaluating it and now we are developing the plans to understand behaviours and attitudes. The quarterly benefit cap statistics will continue to be produced, and the May 2017 release will be the first to show the impact of the lower levels.

I hope I have reassured the House that the Government have put in place measures that provide significant additional support to claimants affected by this policy to help them adjust, and wherever possible to move into work.

**Lord Kirkwood of Kirkhope:** My Lords, I am grateful to the Minister and to all colleagues who have contributed to this debate. I think it has been worth while. My difficulty with the Minister's response—which I will study, as I always do; I have the box set of the Freud responses over 10 years—is that I was looking for "additional", but I did not get that. It is also too passive. A lot of good work is laid in front of some of these people who are confronting quite catastrophic changes in their financial circumstances. I would have expected a benefit team to have been geared up to deal with that specifically, certainly for six months or so, and that is absent. That is inadequate, because people will suffer as a result of it not being there.

I trust that the Minister has taken the message that although we had important debates about this in 2010 and 2015-16, this is a clear and present danger if it is not got right, and it will continue to be considered in that vein by the department. However, because of the absence of the activity that I was looking for and the additional measures which were not produced, I fear I must test the opinion of the House.

*8.58 pm*

*Division on the Motion*

*Contents 74; Not-Contents 87. [The Tellers for the Contents reported 74 votes; the Clerks recorded 73 names.]*

*Motion disagreed.*

**Division No. 3**

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Arran, E.
Ashton of Hyde, L.
Bates, L.
Berridge, B.
Bertin, B.
Borwick, L.
Bottomley of Nettlestone, B.
Brabazon of Tara, L.
Caithness, E.
Cathcart, E.
Cavendish of Furness, L.
Chisholm of Owlpen, B.
Colwyn, L.
Cope of Berkeley, L.
Courtown, E. [Teller]
Couttie, B.
Crathorne, L.
De Mauley, L.
Dundee, E.
Dunlop, L.
Eames, L.
Evans of Bowes Park, B.
Faulks, L.
Fink, L.
Finn, B.
Flight, L.
Forsyth of Drumlean, L.
Freud, L.
Gardiner of Kimble, L.
Glenarthur, L.
Goldie, B.
Goodlad, L.
Green of Hurstpierpoint, L.
Higgins, L.
Hodgson of Abinger, B.
Holmes of Richmond, L.
Howe, E.
Hunt of Wirral, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Leigh of Hurley, L.
Livingston of Parkhead, L.
McInnes of Kilwinning, L.
Mackay of Clashfern, L.
Manzoor, B.
Mar, C.
Marlesford, L.
Mobarik, B.
Montrose, D.
Morris of Bolton, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
Patel, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Renfrew of Kaimsthorn, L.
Ridley, V.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Sheikh, L.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Somerset, D.
Stedman-Scott, B.
Stroud, B.
Sugg, B.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Trefgarne, L.
Trenchard, V.
Vere of Norbiton, B.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Whitby, L.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

*House adjourned at 9.09 pm.*