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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

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§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE SECOND SESSION OF THE FIFTY-SIXTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE EIGHTEENTH DAY OF MAY IN THE
SIXTY-FOURTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES **VOLUME DCCLXXVII**

FIFTH VOLUME OF SESSION 2016-17

House of Lords

Monday 28 November 2016

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Death of a Member: Lord Taylor of Blackburn

Announcement

2.35 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of Lord Taylor of Blackburn on 25 November. On behalf of the House, I extend our condolences to the noble Lord's family and friends.

Multilateral Disarmament

Question

2.36 pm

Asked by ***Baroness Miller of Chilthorne Domer***

To ask Her Majesty's Government whether they intend to oppose the proposed United Nations resolution on taking forward multilateral nuclear disarmament; and, if so, what alternative measures they consider could lead to progress being made on multilateral disarmament negotiations.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the UK voted against this resolution on 27 October as we do not believe that the negotiations it mandates will lead to progress on global nuclear disarmament. We are committed to a world without nuclear weapons, in line with our obligations under the nuclear non-proliferation treaty, but the best way to achieve this goal is through gradual multilateral disarmament, negotiated using a step-by-step approach and within existing international frameworks.

Baroness Miller of Chilthorne Domer (LD): My Lords, I welcome the Minister reiterating this country's commitment to multilateral disarmament, but does he share the frustration of the UN Secretary-General, who said that:

"The UN disarmament machinery is locked in chronic stalemate"?

Although, as the Minister says, Article VI of the NPT is supposed to ensure progress, in fact some nuclear weapons states such as India, Israel and Pakistan have not even signed the treaty while others, including the UK, US, Russia and France, oppose the current resolution the Minister is talking about—and all this is happening at a time when the world as a whole is going to spend $1 trillion on the modernisation of nuclear weapons. How will it be possible to open the dialogue that would lead to what the Minister asserts we hope will happen?

Earl Howe: The noble Baroness points to a number of obstacles which I do not for a moment wish to dispute. But in the end the only way to achieve global nuclear disarmament is by creating the conditions whereby nuclear weapons are no longer necessary, and the precursor to that has to be achieving consensus among and between nuclear states. We remain determined to continue to work with partners across the international community to make progress on multilateral disarmament, and that in turn depends on building trust and confidence between nuclear and non-nuclear weapons states. The United Kingdom has been at the forefront of a number of initiatives to achieve that.

Lord Trefgarne (Con): My Lords, can my noble friend confirm that the Government will agree to nothing in this field which is not both balanced and verifiable?

Earl Howe: My noble friend makes two very important points. The UK is currently working with Norway on the verifiability of disarmament to achieve what my noble friend wishes to see in the long term. But a balanced treaty, if we arrive at that point, is obviously a necessary condition.

Lord West of Spithead (Lab): My Lords, does the noble Earl agree that this resolution is not very helpful at all? As he says, there are other areas that we need to focus on such as: reactivating some of the existing agreements; trying to take weapons off immediate readiness for release, which our nation does not do but some countries still do; getting rid of short-range missiles; holding a debate about ballistic missile defence; and finding methods of talking immediately with the Russians and others about de-escalation where necessary.

Earl Howe: The noble Lord makes some very good points. Among the actions that the UK has recently been taking is work with Norway on disarmament verification, as my noble friend Lord Trefgarne referred to. We initiated the P5 process in 2009 to bring together nuclear weapons states to build the trust and confidence that I referred to. We proposed a programme of work at the conference on disarmament held in Geneva in February this year with the aim of reinvigorating the conference's work—in fact, that was eventually blocked but we made a good attempt at it—and we continue to press for the entry into force of a comprehensive nuclear test ban treaty. So there is work that we are trying to push along.

Lord Hannay of Chiswick (CB): My Lords, are the Government giving any thought to globalising and generalising some of the constraints in the agreement between Iran and the P5+1, thus building a basis on which that agreement could extend far longer than the 15 years it will currently last?

Earl Howe: I completely take the noble Lord's point. It is early days to be thinking in those terms, although he is right to do so. It is encouraging that the November IAEA report to the board of governors confirmed that Iran remains compliant with the nuclear-related measures set out in the joint comprehensive plan of action. We welcome the findings of the DG's report. We praised the IAEA for its progress and continued work on that very challenging task, but no doubt lessons and messages will emerge from that strand of work.

Lord Harris of Haringey (Lab): My Lords, the noble Earl has talked about the need to move towards multilateral disarmament, but there are stocks of fissile material in various parts of the globe. How confident is he that those stocks, which could be turned into nuclear weapons, are sufficiently secure to avoid them falling into the hands of aspirant nuclear powers or, worse still, non-state actors that might wish to possess such materials?

Earl Howe: My Lords, that is clearly a constant concern and the noble Lord is right to raise it. Against that background, the UK continues to push for the early start of negotiations, without preconditions, on a fissile material cut-off treaty in the Conference on Disarmament. We supported a Canadian-backed resolution at the United Nations first committee on that topic, in October. In this country we have a voluntary moratorium on the production of fissile material for nuclear weapons or other explosive devices. We have not produced fissile material for nuclear weapons since 1995.

Baroness Jolly (LD): My Lords, in 1968 the UK signed the nuclear non-proliferation treaty and, as the noble Earl said, a lot of progress has been made since then. President Reagan met with President Gorbachev in Helsinki in 1986, and that resulted in the Intermediate-Range Nuclear Forces Treaty. What encouragement will the Government give to President-elect Trump to talk to his friend President Putin to kick-start multilateral talks on further reduction, in time for the 50th anniversary of the NPT in 2018?

Earl Howe: I hope the noble Baroness will be glad to know that at the appropriate time we will convey to President-elect Trump the importance of the nuclear non-proliferation treaty. We should not underestimate the role it has played for almost five decades in helping to limit proliferation and provide a framework for disarmament and the peaceful uses of nuclear energy. Nearly all United Nations member states are signed up to it—that is a tremendously important point in its favour. That treaty should form the basis on which we make progress in this area.

Aid and Trade

Question

2.44 pm

Asked by ***Lord Hannay of Chiswick***

To ask Her Majesty's Government whether the recent statement in Kenya by the Secretary of State for International Development that she envisaged using the aid budget to promote the United Kingdom's bilateral trade agreements following its departure from the European Union is consistent with the International Development Act 2002.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Department for International Development will continue to ensure that the assistance we provide complies with the requirements of the International Development Act 2002. An important focus of our work is developing countries' economic development and prosperity, and their trade capacity. That is the clearest route out of poverty and it is in our national interest so to do. There is no doubt that the UK's generosity strengthens our global standing as we wish to establish new trading relationships.

Lord Hannay of Chiswick (CB): My Lords, I thank the noble Lord for that reply, which I interpret as meaning that it is not inconsistent with the 2002 Act to speak about the things that the Secretary of State spoke about in Kenya, but it would be to do them. Will the Minister say whether he and his ministerial colleagues understand the dismay that that statement in Kenya caused to those of us who have been supporting the Government through thick and thin on their commitment to 0.7%? Does he recognise that, if it became our policy to provide aid for countries that gave us good trade agreements, we would be laying ourselves open to blackmail straightaway?

Lord Bates: Let me say to the noble Lord that that last thing was not, in fact, what the Secretary of State said. The noble Lord will know, as a distinguished former ambassador to the UN and to the EU, how important this 0.7% is for the UK on the world stage. It is also true to say that the UK's ambition is not to keep countries in a position of aid dependency for ever. We want them to grow their economies and strengthen economic development. That is what the Secretary of State was saying and it is the general thrust of what the Department for International Development does, through the 0.7% commitment.

Lord Popat (Con): My Lords, as the Prime Minister's trade envoy to Uganda and Rwanda, I recently had the privilege of meeting the leaders of those two countries, President Kagame of Rwanda and President Museveni of Uganda. During my discussions with them, what transpired is that they are keener on trade than aid; it is trade and investment that can create jobs and wealth and get people out of poverty. Does my noble friend agree that many east African countries are very eager for Britain to shift from aid to trade and that the Secretary of State's remarks reflect this?

Lord Bates: I can confirm that, and I pay tribute to my noble friend for his work as the Prime Minister's trade envoy to Rwanda and Uganda, as I do to all our trade envoys who carry out that important task around the world. If you compare 1990 to 2010, the number of people in extreme poverty has reduced by 50%. That has not been achieved through aid flows; it has been achieved through aid flows directed at improving economic development, which then lifts people out of poverty. That remains our aim, and trade is an important element of that.

Lord Kinnock (Lab): My Lords, can the Minister confirm reports that the Government are to quadruple, to £6 billion, funding for CDC, formerly the Commonwealth Development Corporation? If so, will this not completely contradict existing stated government policies on combating poverty, increasing accountability and fighting tax evasion and tax avoidance, given CDC's proven record of investing through tax havens?

Lord Bates: I can certainly say to the noble Lord that that is not the case in terms of tax havens. CDC is very clear that it does not use tax havens for investment, or to hide investments, but is a transparent international finance organisation that does tremendous work around the world. It invests in 1,200 companies, and safeguards and creates about 1 million new jobs. The CDC Bill, which has its Second Reading in the other place tomorrow, is simply to give the facility for that increased investment to take place, from £1.5 billion to £6 billion, because the former figure was put in place 17 years ago and we think it is time to look at it again. However, in order for that money to be drawn down, CDC will have to comply with the same rigorous business case requirements, on transparency of investments, that any other organisations would. I hope that that helps to reassure the noble Lord on that point.

Baroness Sheehan (LD): My Lords, it beggars belief that, at the same that the Government were in Marrakech signing the COP 21 agreement, they were also announcing a huge oil and gas project in east Africa, using £25 million of the UK aid budget. Will the Minister point out to his colleagues that east Africa is facing famine due to desertification brought on by fossil fuel-induced climate change and that some policy coherence on the part of the Government would be welcome?

Lord Bates: It is certainly true to say that we were a leading force in securing that agreement in Paris and building on it at the recent G20 summit in Hangzhou. We are very committed to that. We are addressing all the humanitarian issues that were talked about. The UK is one of the largest economies—in fact, it is the only major economy—to achieve its 0.7% commitment. We do that in humanitarian aid but, under the rules of the OECD and the DAC, we also allow certain amounts to be introduced and used to build capacity and to build business and economic development within those countries, and that is an example of one of those.

Baroness Hayman (CB): The Minister talked about economic development as the route out of poverty for people in the developing world, which is absolutely right, but will he accept that it is not only through trade that economic development happens? The investment that DfID has made over the years in health and education is absolutely a prerequisite to that economic development.

Lord Bates: The noble Baroness, with her great experience, has put her finger on the point here—that it is placed in context. That is why it is very important that, in order for economic development to happen, we need to stop the conflict, we need to start getting people into school, we need to eliminate discrimination and we need to improve economic development. It is across the range, and that is what DfID's policy tries to address.

Lord Lexden (Con): Do the Government believe that more needs to be done to ensure that our aid actually reaches the people for whom it is intended?

Lord Bates: Yes, and that is why we have initiated the multilateral and bilateral reviews and announced the review of engagement with civil society organisations. Notwithstanding the fact that we have reached 0.7%, it is important to ensure that every penny that is spent on that actually goes towards the aim for which it was given by the British taxpayer—namely, to eradicate extreme poverty in this world.

House of Lords: Appointments Commission

Question

2.52 pm

Asked by ***Lord Forsyth of Drumlean***

To ask Her Majesty's Government whether they intend to amend the terms of reference of the House of Lords Appointments Commission to ensure that recommendations by the leaders of political parties are treated in the same way as appointments to the Crossbenches and assessed for suitability as well as propriety.

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): The independent House of Lords Appointments Commission does an effective job in recommending candidates for non-party peerages and vetting for propriety all life Peer nominations, including those nominated by the UK political parties. It is right that the leaders of those political parties remain accountable for their nominations.

Lord Forsyth of Drumlean (Con): My Lords, I am very grateful to my noble friend for that Answer but it does not answer my Question. Non-party nominations to this House are subject to a rigorous interview process by the Appointments Commission, which looks at whether or not they have the time and the necessary skills, and looks at the overall pattern of appointments to the House in order to ensure diversity and a range of skills. Why on earth should that not happen to party-political nominations? I can think of no other appointments in this country which do not have some kind of interview to assess suitability.

Baroness Evans of Bowes Park: As I said to my noble friend, we believe that it is for political parties to be accountable for the Members appointed to their Benches, and that they should be responsible for ensuring that the people they nominate make an effective contribution. We believe that the current remit of the commission does an effective job in striking the balance between recommending independent candidates, ensuring the propriety of all nominees and maintaining the accountability of political parties for their nominations.

Baroness Smith of Basildon (Lab): My Lords, the noble Lord, Lord Forsyth, has raised these issues before. I do not entirely agree with him but he is on to something here. The Appointments Commission has a specific purpose, including the clear, transparent understanding of the criteria for appointment to this House, and we do not have that for any political appointments. Last time we had the bizarre spectacle of a leaked name publicly withdrawing from a process that had not even been publicly acknowledged. Is there not a role for either HOLAC or a similar body not to make political judgments but to examine the contribution an individual could make, their expertise, interests and skills, and their willingness to contribute as a working Peer, as well as their suitability?

Baroness Evans of Bowes Park: The noble Baroness makes an important point about the rigour with which the commission looks at propriety, by the very case that she raises. It has an extremely important role in considering the past conduct of nominees and looking at whether anything they have done in the past may bring the House into disrepute. It has a key role in that area.

Baroness Boothroyd (CB): My Lords, on 7 September last year the noble Baroness, Lady Stowell, who was then the Lord Privy Seal, said:

"There is a convention that if a new Peer is a special adviser, they will be able to participate in the Division Lobbies but not contribute to debates".—[*Official Report*, 7/9/15; col. 1213.]

Quite frankly, that convention seems to me to have been invented in the last few years. Would it not be more appropriate if this issue were referred to the Appointments Commission for thorough examination?

Baroness Evans of Bowes Park: The noble Baroness is absolutely right. Although the noble Lord, Lord Hart of Chilton, entered the House in 2004 he did not make his maiden speech until 2007, after ceasing to be a special adviser. This approach, based on advice from the then Clerk of the Parliaments, has been accepted as practice ever since and the House authorities have confirmed that they consider that it remains appropriate.

Lord Newby (LD): Does the noble Baroness the Leader of the House agree that in a democracy, the best people to decide on the suitability of those who make the laws are the people themselves in a ballot?

Baroness Evans of Bowes Park: I am afraid that the noble Lord will expect my answer not to be yes. What is most important is that this House does an incredibly important job, and we can see by looking across the House, and across all Benches, the wealth of expertise and experience that we have. This is important and we should celebrate and talk positively about the role of the House, rather than perhaps continuing to add to some of the public perception that we do not do the job which we actually do.

Lord Low of Dalston (CB): My Lords, I declare an interest as a member of the House of Lords Appointments Commission. The commission has not discussed this issue but, speaking for myself, an amendment of the kind suggested by the noble Lord, Lord Forsyth, would be not unhelpful because it is often quite difficult to radically distinguish questions of suitability and propriety.

Baroness Evans of Bowes Park: I thank the noble Lord for his insight, particularly in view of his role, but as I said, we have no plans to amend the commission's remit.

Lord Cormack (Con): My Lords, I will try not to emulate the noble Lord, Lord Newby, and lead with my chin but will my noble friend amplify her earlier remarks? She said that those who make the political nominations are accountable, but accountable to whom and how?

Baroness Evans of Bowes Park: It is beholden on political parties to ensure that they make effective nominations to contribute to the role of this House; it is beholden on us within this House to work with the best of our ability here. It is also important that we reflect the wide range of expertise and experience of people around this country, so that we can do an effective job on their behalf.

Lord Grocott (Lab): Does the Leader of the House agree that whatever the strengths and weaknesses of the Appointments Commission, it is a far better system

for getting people into this House than the system of by-elections for the replacement of hereditary Peers, including a recent by-election where there were nine candidates and an electorate of three? Will the Minister acknowledge that a splendid Bill to eradicate this procedure is scheduled for a week on Friday—modesty prevents me mentioning its sponsor—and agree that the Government should give it their support?

Baroness Evans of Bowes Park: I congratulate the noble Lord on his excellent outline of his own Bill; I think we all know that it is he who is taking this forward. I am afraid that on this occasion I cannot offer him those kinds of assurances. However, it is imperative that all people in this House play their part, and we have a range of skills and expertise that help us to do so.

Baroness Meacher (CB): My Lords, will the noble Baroness the Leader of the House have discussions with her colleagues about the need for an amendment to a suitable forthcoming Bill to introduce a statutory ceiling on the numbers of Peers entitled to sit in your Lordships' House, and an associated amendment to provide for a procedure to reduce the numbers of Peers to achieve a ceiling by 2020?

Baroness Evans of Bowes Park: I thank the noble Baroness for her question. As I am sure she is aware, we will be having an extensive debate on this next Monday, which I am looking forward to. I am sure there will be lots of interesting opinions and views and I urge all noble Lords who have not already signed up—a lot of noble Lords have—to do so in order that we can hear the whole range of views across the House.

European Union: Trade

Question

2.59 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government whether they have given undertakings to different sectors of industry regarding trade with the European Union; and, if so, whether these will be incorporated in their industrial strategy.

Lord Henley (Con): My Lords, as the Prime Minister has said, the Government want British companies in different sectors to have the maximum freedom to trade with and operate in the single market and to let European businesses do the same here. The industrial strategy will make clear that building a productive, open and competitive business environment is vital in delivering an economy that works for all.

Lord Haskel (Lab): My Lords, this Question was originally put down when assurances were given to Nissan regarding Brexit and the EU. It remains topical because everybody else is still waiting for a reply. Will the Government confront this uncertainty? Will they show some leadership and give the sense of direction that is needed to enable and encourage the investment and the organisation so that everybody else can get on with the job of raising the productivity that we so desperately need?

Lord Henley: My Lords, the noble Lord received an answer from my noble friend Lady Neville-Rolfe when she responded to the Statement on 31 October. A response was also given by the Secretary of State in another place on the same occasion. As we made clear, we will publish an industrial strategy later this year. There are not many days to go before the year ends, and the noble Lord can wait for that occasion.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree that any special Brexit deal for Nissan, as intimated by the noble Lord, Lord Haskel, or any other of our car makers, is not even necessary, because EU car makers sell us 2.4 cars for every car that we sell them, and they enjoy 64% of our domestic car market? And are there not 2.5 million more jobs in the EU selling things to us than we have selling things to them? Is it not in the EU's interest to continue in free trade with us in the car sector and, indeed, in other sectors?

Lord Henley: My Lords, as the noble Lord knows, no special deal was made for Nissan. A certain number of assurances were given, which were set out by my noble friend in repeating the Statement here on 31 October. We look forward to Nissan producing as many cars as it does. We are grateful for the fact that it has put such faith in the north-east and in this country. Seven thousand jobs, and a great many others in the supply stream, are dependent on that. We also look forward to continuing to trade freely with Europe.

Lord Wigley (PC): My Lords, is the Minister aware that some 200 American companies and 50 companies from Japan have located in Wales in order to sell into the European market and that any system of financial aid to industry has to be open, equally accessible and transparent so that companies such as Ford, Toyota, Airbus and Siemens are not disadvantaged in regard to their competitors?

Lord Henley: My Lords, as my right honourable friend made clear in another place, there has been no compensation package for Nissan. Nissan will continue to produce its vehicles in the north-east, and we hope that all those firms in Wales and other parts of the United Kingdom will continue to produce whatever they are good at in those countries and will continue to trade freely with the rest of the European Union.

Lord Fox (LD): My Lords, I refer to my interests as set out in the register. The Government are pinning an awful lot of hope on their industrial strategy. I think the Minister said that a Green Paper will be published at the end of the year, but when will we have the full-blown, finished, finalised industrial strategy that will help guide us through the Brexit negotiations and on the investments that the Government seem to be planning?

Lord Henley: My Lords, the noble Lord is right to point out that the industrial strategy will be a Green Paper. As it is a Green Paper, it will involve a great deal of consultation and further discussion. In due course, further papers will follow from it. I am not going to give a timescale as to when that might be.

Lord Stevenson of Balmacara (Lab): My Lords, I welcome the noble Lord back to the Front Bench and look forward to debating with him again in future. In October, the noble Baroness, Lady Mobarik, said that the forthcoming Green Paper—I am glad to hear it confirmed that there will be one—will continue to give support to the original proposal by the Prime Minister that employees and stakeholders will get a stronger voice in company boardrooms. Since then, business organisations have unanimously come out against this. Does it remain a commitment of the Government?

Lord Henley: My Lords, I am not going to comment on what will be coming before the noble Lord and others sometime later this year. The noble Lord does not have to wait long—he does not even have to wait as long as Christmas before this wonderful Green Paper comes out. He can then peruse it and make his comments in due course.

Lord Kinnock (Lab): My Lords, can the Minister not see the contradiction in his statement a few moments ago that "assurances"—I am quoting him—have been given to Nissan but that there is no "special deal"? Given that the need for assurances arises wholly and solely out of this country's impending departure from the European Union and the single market, why do the Government feel so inhibited about publicising the assurances given so that they can be examined to see whether there is in fact a special deal which could be imparted to all the other companies that will be affected?

Lord Henley: My Lords, I made clear that there was no compensation package to Nissan. My right honourable friend the Secretary of State made that clear and my noble friend made it clear when she repeated that Statement on 31 October and gave four assurances. There is not time for me to go through those four assurances, but I refer the noble Lord back to the debate that was held on 31 October, where he can read through them.

Prison Suicides

Private Notice Question

3.06 pm

Asked by ***Lord Beecham***

To ask Her Majesty's Government what urgent action they are taking to tackle prison suicides in the light of the latest figures showing a suicide within the prison system on average every three days this year.

Lord Beecham (Lab): My Lords, I add my welcome to the noble Lord on his return to the Front Bench, and beg leave to ask a Question of which I have given private notice.

Lord Henley (Con): My Lords, I thank the noble Lord for that very kind remark. This is a serious issue. Prison safety is our main priority, and we are determined to tackle the problem. Our £500 million *Prison Safety and Reform* White Paper will help recruit an extra 2,500 officers, helping to reduce self-harm and violence and allowing greater individual supervision of offenders. We provide vital support to prisoners at risk of suicide every day, including on reception to prison and through our hard-working prison staff, health partners and the prisoner Listener programme.

Lord Beecham: My Lords, it is blindingly obviously that our overcrowded and understaffed prisons are in crisis. The number of suicides this year has already surpassed the highest number previously recorded, in 1978. Self-harm and mental health problems continue to increase. All of this places intolerable pressure on staff, who will, even after the additional 2,500 are eventually appointed, still be 4,600 short of where they were four years ago. In their prisons White Paper, the Government devote all of four paragraphs to health issues and promise a review. Given the role of NHS England and Public Health England, they promise a joint approach to the commissioning of prison health services, with responsibility for budgetary and clinical decisions and for quality remaining with commissioners and providers, and with governors taking joint responsibility. But, crucially, there is no mention of any additional funding in the context of the NHS, which is also in the throes of a growing crisis, and for which no extra funding was promised in the Autumn Statement. Has the Ministry of Justice made any estimate of the cost of tackling the health crisis in our prisons? Will the Department of Health foot the bill, thereby increasing the pressure on the NHS? Is it not high time for the Government to recognise that extra funding needs to be found for the prison health service, but not at the expense of the mainstream NHS budget?

Lord Henley: My Lords, I accept that we are in a very serious situation. My right honourable friend the Secretary of State has publicly acknowledged that the level of violence in our prisons is too high. She has also said that we are addressing it—and that is what the White Paper set out to do, with a comprehensive reform of our prison system. That is why she made it quite clear that there would be an extra 2,500 officers by 2018. I accept that 2018 is some way off, which is why she made it clear that, starting with the most challenging prisons, there would be an extra 400 officers by March next year.

In the White Paper—the noble Lord will probably be more familiar with the White Paper than I am, as I am very new to the issue this afternoon—we set out a number of matters to ensure that prisons are safer and more secure, that standards are raised, that we will see a further empowering of prisoners and we can introduce greater accountability and scrutiny.

On his questions about extra funding from prisons to the health service and from the health service to prisons or vice versa, I will certainly take those on board and make sure that my right honourable friend is made aware of them.

Lord Marks of Henley-on-Thames (LD): My Lords, there is a new report from the Howard League and Centre for Mental Health. That report and the statistics mentioned by the noble Lord, Lord Beecham, strikingly demonstrate the shocking crisis in our prisons. The White Paper that the Minister mentioned, *Prison Safety and Reform*, contains much that is valuable on renewing the prison estate, tackling the flow of drugs and bringing more education to prisons, but these are long-term

measures. The crisis requires urgent action: many more staff in weeks and very few months, not years; an end to prisoners having to spend 23 hours in their cells; an end to mental health prisoners being placed in segregation when we need more secure hospital places; a serious attack on overcrowding, starting immediately with an end to IPP prisoners and their release; and guidance given on an end to short sentences. When will the Government start taking the measures that are needed to solve this very urgent crisis, which is far worse than simply a "serious situation"?

Lord Henley: My Lords, I was aware of the new report by the Howard League because I heard news of it on the radio this morning. At that stage I did not realise I would be at the Dispatch Box responding to the noble Lord about the matter some hours later. I am very grateful to him for drawing it to the attention of the House.

He makes clear, as did I, that a number of long-term measures are set out in the White Paper, and I hope the House is grateful for that. But I also acknowledge that short-term measures are necessary. That is why I wanted to highlight the fact that we are doing something in the 10 most challenging prisons to get 400 extra officers by March next year. The noble Lord will accept that that is something for the short term and something that we can do quickly.

At this stage, all I can say is that I note what the noble Lord said and that it will be taken on board. We are not complacent on this matter. As I said in my second response, we accept that this is a very serious situation, which is why we are trying to respond in both the long and short term.

Lord Ramsbotham (CB): My Lords, I wish Ministers would stop talking about "extra staff". They are not extra; they are replacing staff who were wilfully cut, as the noble Lord, Lord Marks, said. I also wish Ministers would stop taking a long-term view of what has been exposed as being a crisis by successive chief inspectors of prisons over many years but has been ignored. Most recently it was raised by the Prison Governors Association, which called for a public inquiry into the state of our prisons. That organisation should know because it is on the receiving end of what is happening in prisons.

The disgraceful figure of suicides owes much to the situation that, frankly, the Government have created. So when will they show a sense of urgency in getting out of the situation rather than talking all the time about the long term?

Lord Henley: My Lords, the noble Lord implies that we are being complacent and that we are not doing enough. I think I have stressed that my right honourable friend accepts that there is a very serious situation. I also stress that she accepts and values the work done by the Prison Officers' Association. As the noble Lord well knows, my right honourable friend recently met the association and has a great deal of respect for what it does; I think that the meeting was constructive. With meetings of that sort and what my right honourable friend has proposed, I hope that we can take these matters forward and that the noble Lord, who I know has more expertise in this than anyone else, will accept that we are doing all we can in this matter.

Lord Elton (Con): My Lords, declaring an interest as a former Minister for the Prison Service and, before that, in the Department of Health and Social Security, will my noble friend recognise that, in the long term, the effective, humane and cost-effective solution to this does not lie inside prison or how you treat prisoners at all; it depends on how you treat young people so that they do not become criminals? The path to criminality is easily detected as it begins—frequently, simply by being excluded from school and driven on to the streets without supervision. Small resources there would have big results.

Lord Henley: My Lords, I well remember my noble friend when he stood at the Dispatch Box answering for Her Majesty's Government on these matters. He offered us a great many thoughts that ought to be taken on board and he is right to stress the important fact that it would be better if people never went to prison in the first place.

Baroness Farrington of Ribbleton (Lab): My Lords, the Minister will have gathered that the majority view in your Lordships' House is that the Government's response to a desperate situation will be too little, too late. I asked his noble and learned friend Lord Keen to write to me when he justified the reduction of more than 4,000 officers by saying that prisons had closed. I asked him which benchmarks were being used to assess the number of prison officers needed. It is clear that many in your Lordships' House think that the Government are not justifying the meagre increase mitigating the effects of their massive cuts. Will suicides, overcrowding and the reduction in staffing and lack of access to training be part of the Government's new benchmarks? I await the answer from the Minister's noble and learned friend as to what is used to calculate staffing levels, and which are the miraculous new benchmarks that seem to be leading to chaos in our prisons for the foreseeable future.

Lord Henley: My Lords, I have not had the pleasure of seeing the noble Baroness's letter to my noble and learned friend. I will certainly make sure that it is answered as soon as possible and will make a point of having a look at it myself—but I hope that she will accept that, having not seen it myself, I cannot yet respond to it in detail.

Policing and Crime Bill

Order of Consideration Motion

3.17 pm

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

That the amendments for the Report stage be marshalled and considered in the following order:

Clauses 1 to 6, Schedule 1, Clauses 7 to 9, Schedule 2, Clauses 10 and 11, Schedule 3, Clauses 12 and 13, Schedule 4, Clauses 14 and 15, Schedule 5, Clauses 16 to 27, Schedule 6, Clause 28, Schedule 7 Clause 29, Schedule 8, Clauses 30 to 32, Schedule 9, Clauses 33 to 37, Schedules 10 and 11, Clauses 38

[Baroness Williams of Trafford]
to 44, Schedule 12, Clause 45, Schedule 13, Clauses 46 to 50, Schedule 14, Clauses 51 to 105, Schedules 15 and 16, Clauses 106 and 107, Schedule 17, Clauses 108 to 127, Schedule 18, Clauses 128 to 142, Schedule 19, Clauses 143 to 161, Title.

Motion agreed.

Pension Schemes Bill [HL]

Committee (2nd Day)

3.18 pm

Relevant document: 6th Report from the Delegated Powers Committee

Clause 26 agreed.

Clause 27: Content of implementation strategy

Amendment 42 not moved.

Clause 27 agreed.

Clause 28: Duty to pursue continuity option

Amendments 43 and 44 not moved.

Clause 28 agreed.

Clauses 29 and 30 agreed.

Clause 31: Pause orders

Amendment 45

Moved by ***Baroness Drake***

45: Clause 31, page 21, line 36, after "necessary" insert "or prudent"

Baroness Drake (Lab): My Lords, I shall speak to Amendment 45 and to the other amendments in this group. My noble friend Lord McKenzie will speak to Amendment 47A.

Clause 31, taken with Schedule 1, provides a power for the regulator to pause certain master trust activities once a triggering event such as a wind-up has occurred. That power can be exercised if there is an immediate threat to the assets of the scheme or it is in the interests of the generality of the scheme members. A pause order prevents new members coming in, payments being made, further contributions being received or benefits being paid. That is a sensible provision. The administrative and accounting records of the master trust or of other companies used by the trust to hold investments or provide services may be in a mess. It may not be clear who is entitled to what. Evidence of fraud may emerge during a triggering event. The early years experience of the Pension Protection Fund when accessing schemes that have the mix of DB and DC benefits revealed just how poor the records could be and the problems that that throws up.

The amendments in this group in my name and that of my noble friend Lord McKenzie are directed at how the pause will work in practice. Clause 31(4) restricts the use of a pause order to circumstances in which there is,

"an immediate risk to the interests of members … or the assets … and … it is necessary",

to act. Amendment 45 adds the words "or prudent" after the word "necessary" to protect members' interests, as a condition to be met if a pause order is to be made. The intention behind inserting that phrase is to give the regulator greater discretion and an ability to act more cautiously and earlier than is suggested by the word "necessary"—and, indeed, before a risk has crystallised—to allow the regulator to mitigate emerging risks to members and take action when in their informed view it would be prudent to do so. The power to issue a pause order comes into effect only when there is a triggering event, when a failure of some kind has already occurred, which means that the likelihood of a risk to the assets or members crystallising is greater, so allowing a prudent approach in those circumstances seems sensible.

If a pause order is in place, Clause 31 provides that no subsequent pension contributions due to be paid into the scheme by or on behalf of the member or employer can be paid, and any pension contributions deductions from a member's earnings will be repaid to them. Under the Bill as drafted, the total period during which a pause order can be in place is six months, but the Government have tabled Amendment 52, which will allow the regulator to extend the pause order on one or more occasions, unconstrained by the six-month limit. So, the pause order could stay in place for quite a long time. During the period when the pause order is in place, the member loses the ability to save for a pension through the workplace scheme, loses the tax relief and loses the employer's contribution due under auto-enrolment. It is harsh on the individual to lose pension savings and interrupt the harnessing of inertia in auto-enrolment, when through no fault of theirs a master trust fails.

Amendment 46 would address that loss to the member by requiring that pension contributions that would otherwise have been due to a member should be held in an escrow account or otherwise under arrangements to be specified by the regulator. Those contributions could be held somewhere safe until the pause order is lifted and then paid into members' individual pension pots. It would not be necessary for the money held to be invested so as to gain value that reflects what the member would have received if the original scheme had not been wound up. Holding it in a cash fund could be sufficient.

Does the Minister agree that it is harsh and unfair for workers to lose savings in their pension pots under auto-enrolment as a consequence of a master trust's failure? Will he consider a provision allowing the pension contributions otherwise due by and held on behalf of the scheme member to continue to be paid into an appropriate holding vehicle during the period of the pause order? Clause 31 allows a pause order to prevent the making of payments and the paying out of benefits while it is in place. Depending on how such an order is applied, and for how long, that could pose real problems for some members of the scheme. Amendment 50 would allow payments to be paid for

someone in ill health. For example, an older person with debilitating chronic ill health or a terminal illness could be in real difficulty if they were denied access to pension savings that they needed to live on. How is it intended that the pause order regulations will address the needs of people in ill health?

Master trusts will receive pension contributions into members' pots, but they will also pay out money to members accessing their savings. Where a scheme member has been relying on such payments to live, and may have standing orders in place for their bills, if payments are suddenly ceased they could be in some difficulty. How will the pause order regulations address the needs of those people, particularly pensioners, who are dependent on payments received from the master trust? As I said in opening, the provision for a pause order seems sensible: it is the manner in which that order is operated that could cause unfairness or difficulties.

Baroness Altmann (Con): My Lords, I support these amendments, and I would like to probe the Minister on what the pause order is really meant to achieve. As the noble Baroness, Lady Drake, has just asked, how does he envisage it will work in practice? If a pause order is introduced by the Pensions Regulator, it is likely that an employer will be in breach of its auto-enrolment duties and potentially in breach of contract with its employees. In those circumstances, we could need some of the bulk DC transfer regulations, which we have discussed and I hope we may come to later, to enable a scheme to ensure that such transfers can be made relatively swiftly and without too much expense—perhaps before a triggering event, although the proposal is currently only if there is a triggering event. That would require some of the existing regulations that are made with DB schemes in mind to be undone.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, I thank noble Lords for the debate last Monday when a number of amendments were considered. Today should bring an equally interesting discussion on a slightly broader range of topics. This group relates to the new pause power introduced in Clause 31, and includes some amendments tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, and some tabled by me. I thank the Committee for its forbearance in considering government amendments at this stage.

3.30 pm

I turn first to Amendments 45, 46 and 50. Amendment 45 would diminish the threshold of the conditions that must be met for the Pensions Regulator to be able to use the new pause power. The pause power can have a significant impact on the scheme and the members. We therefore think, as with existing freezing orders, that it should be used only where it is necessary to do so. There are, of course, other protections for members which apply automatically at the point a triggering event occurs—namely, the prohibition on the master trusts permitting new employers to join the scheme or to enter into an agreement with the scheme to make sure that new employers are not joining a scheme that is at risk of closure. There are also the charges restrictions.

I appreciate the intent behind Amendment 46, which seeks to provide for continuity of savings by the member while contributions are paused under the pause power. However, my first concern with this amendment is that its effect could be such that it would be for the Pensions Regulator to hold the fund. Indeed, the noble Baroness, Lady Drake, mentioned that when she talked about a holding vehicle. This is not an appropriate intervention and I would not support the idea of the regulator stepping in or being involved in this way. That is to step beyond the regulator's function, which would require additional legal provision and protection.

My second concern is about the potential complexity and cost implications for employers or others in setting up this alternative savings vehicle. In particular, I question whether the cost and complexity is necessary given the fact this power will be used only in extreme circumstances, and, we would expect, for a limited period of time. Using these pause orders to stop contributions will be used only in exceptional circumstances and for short periods of time. They can initially last for up to three months, with the possibility of extending if they continue to be needed.

I note that the noble Lord, Lord McKenzie, has also tabled Amendment 47A on tax treatment, which would provide that contributions in the form of tax relief at source would not be subject to the pause order. This amendment is unnecessary. I reassure the noble Lord that if the intent is to ensure RAS rebates which are due on contributions due before the pause order is in place, but which are paid after the pause order is made, Clause 31(6)(a) already achieves this. However, when I read Amendment 47A with Amendment 46, I wonder whether the intent is broader than this. If instead the intent is to ensure pension RAS tax treatment of the contributions being paid into an escrow or another account during the pause power, I am far from clear that this is achieved without also needing changes to complex tax law. However, the key issue here is that I do not think Amendment 46 works or achieves the right balance of cost and complexity for the rare occasions on which this type of pause order is likely to be used.

Baroness Altmann: If there is no such provision as that in Amendment 46, what exactly protects members and employers by ensuring that they can continue with their legal duties to contribute to pension schemes for their members under auto-enrolment? Currently, it is not clear to me how it is intended that this pause order will fit with the legal obligations or contracts between the employer and the employee in relation to ongoing pension contributions.

Lord Freud: I think I am right in saying that the pause order would effectively trump those obligations while it is operating. However, I will come back on the detail of that. I think that is accurate. That is why it is in the legislation—so that there is legal clarity about the obligations people have when they pay into a scheme that is formally paused by the regulator.

Under Amendment 50, the pause order would not be able to prevent payments with regard to ill health benefits. The current provisions mirror those in the Pensions Act 2004 with regard to the Pensions Regulator's freezing order. I am not convinced that there is sufficient

[LORD FREUD]
argument on why this should differ to those provisions. In particular, the pause order direction can specify payments, so—in response to the noble Baroness, Lady Drake—the regulator will be able to consider whether to use the power to stop such payments.

The provisions in Schedule 1 to which the noble Baroness has added her amendments make it clear that there is no impact on orders made on divorce which modify members' rights in the scheme. They do not provide for generalised exemptions to the power to prevent transfers under the pause order. The amendment would mean that, regardless of the situation, ill health payments could not be affected by a pause order. Government Amendment 47 would enable the regulator to tailor the pause order to the circumstances with regard to stopping benefit payments. I hope that the noble Baroness will agree that that solution is better than the one in Amendment 50. That would include being able to apply the pause to specified benefits and specified members, and in a way that would take account of the specific case and situation. I therefore trust that this gives some comfort that the regulator could consider certain types of membership.

To come back to the question raised by my noble friend Lady Altmann, on the legal duty for employers, paragraph 13 of Schedule 3 ensures that a pause order will not cause employers to fall foul of their legal duties. I am glad to be able to confirm that.

Baroness Altmann: Does that also apply to a contract between the employer and the employee for pension contributions rather than just under auto-enrolment, if it is a term of the employment contract?

Lord Freud: I think that the situation is the same—the fact that you have primary legislation will allow that to happen. I will clarify that, but I think that is the point of primary legislation.

I make the point to the noble Baroness, Lady Drake, that the Pensions Regulator will make a pause order only under carefully considered circumstances. The pause order may last for the duration of a triggering event period but is not likely to continue for a significant length of time, and the regulator must weigh up the potential impacts on members when considering whether to issue such an order.

I shall now turn to the government amendments on the pause power.

Lord McKenzie of Luton (Lab): My Lords, perhaps I might speak to my amendment in this group, which he has answered in part. That might make it a tidier process.

The purpose of Amendment 47A is to look at the issue of tax relief, as the Minister has identified. Under the pause provisions, an order can direct that no new members are to be admitted to the scheme and no further contributions and payments are to be paid towards the scheme by, or on behalf of, any employer or members. This does not apply, under Clause 31(6), to,

"contributions due to be paid before the order takes effect … and … references to payments … include payments in respect of pension credits".

Our amendment seeks to make it clear that amounts recoverable by the provider from HMRC in respect of tax relief attributable to the permitted contributions—that is, those paid before the order—will still be available to the master trust. For the purposes of Clause 31(6)(a), it is presumed that the tax component is a contribution or payment. If so, do the mechanics of how relief at source operates mean that the HMRC payment is due to be paid before the order if the related contribution is—there is a timing issue here—or is it proposed that there will be some form of carve-out for the tax relief under Clause 31(5)(b)?

The intention behind the amendment was to probe that narrow issue rather than to achieve a wider objective, but of course it raises the wider issue of the amounts of the two forms of tax relief, touched upon in particular at Second Reading by the noble Lord, Lord Flight, and the noble Baroness, Lady Altmann. They set down very clearly the problem for schemes operating net pay arrangements for individuals who do not pay income tax, in contrast to those who use the relief at source method and can get tax relief at 20% on the first £2,880 paid into a pension—equivalent to a gross of £3,600. Those who are not subject to income tax and are within the net pay method are clearly missing out. The extent to which they miss out in aggregate may not be dramatic at present and will be influenced by auto-enrolment thresholds or current required contribution levels and the income tax threshold—the personal allowance. However, this will increase as more and more auto-enrolment takes place, the required contribution increases to 3% and there is still a gap—possibly a widening gap—between the threshold and the income tax personal allowance.

Can the Minister tell us how many non-taxpayers are currently contributing to a pension under net pay arrangements and could benefit from relief at source, and what is the aggregate tax benefit forgone? Going back to my earlier point, the amendment is intended specifically to focus on the technical issue of how that tax is garnered and paid before the cut-off point of the pause order.

Lord Freud: My Lords, on that narrow point, I hope that I can again reassure the noble Lord that, when those rebates are due, before the pause order is in place, we have a way of making sure that they are paid—through Clause 31(6)(a). It may be easier for me to write to the noble Lord and describe that process, but I think that it achieves what he is looking for. I will have to provide the figures on the net pay separately but will write to him on those, too.

Lord McKenzie of Luton: I would be grateful if the noble Lord could write on that specific point because I am struggling to see how a contribution—particularly one which comes in fairly late in relation to the date of the pause order—could immediately be converted into a receipt from HMRC, which is what I think the Bill requires.

Lord Freud: This is really a specific point, but I will write to the noble Lord both on the numbers and on how the process will work. I hope that that will be satisfactory and that we can then dispose of the matter for the purposes of later stages of the Bill.

I turn to government Amendments 47, 48, 49 and 52. These are intended to provide further clarity and some tidying up of the provision. They are based on further consideration of the comparisons with the Pension Regulator's freezing-order power in the Pensions Act 2004, and are intended to ensure that they work sufficiently in a triggering event period. Amendment 47 makes clear that the pause power can be used to prevent benefits being paid out. Following the introduction of the Bill to the House, we have received some inquiries as to whether this is achieved through the provisions in the Bill. That was our intent, and as the freezing-order power makes separate provision to cover this aspect, we have, through Amendment 47, made an equivalent and explicit provision in respect of the pause order. Amendment 48 inserts a missing definition of "pension credit", which was an oversight, and mirrors the freezing-order power. Amendment 49 is consequential to Amendment 47, and ensures that members retain their entitlement to any benefit payments affected by the pause order.

3.45 pm

It is critical that the Pensions Regulator can use the new pause power to protect members' interests under the scheme and assets of the scheme. However, it is also important that members' entitlements should remain unaffected by the use of the pause order, so that the effect is not counterproductive. I apologise that this was not ready for inclusion at introduction, but I trust that its effect and intent are acceptable to noble Lords. Indeed, quite a few of the questions and amendments have been around this issue.

Amendment 52 means that the pause order can be extended until the end of the triggering event period. The Bill as introduced allowed for multiple extensions of the pause order but with a limit of six months. The amendment removes the six-month limit to ensure that the pause order can apply to protect members where needed, and through the end of the trigger period if absolutely necessary.

The second set of government amendments in this group are technical and consequential in nature. Amendment 51 allows for regulations that modify transfer provisions for existing legislation to override scheme rules. Amendments 66 to 71 and 74 and 75 make further consequential amendments ensuring that references to scheme rules in the Pension Schemes Act 1993, Pensions Act 1995 and Pensions Act 2004 incorporate references to such overriding provision.

In conclusion, I hope that noble Lords will support these amendments.

Baroness Drake: I thank the Minister for his detailed response to the particular issues I raised in the amendments that I spoke to. However, I do not find the arguments very convincing. The noble Lord said that a pause order would be exceptional—I very much hope it would be, because it would mean that the preceding authorisation and supervision regime had not been very successful. But looking forward, even in an exceptional circumstance, the numbers affected in a failing master trust could be quite significant. It is clear how large the footprint of those trusts will become. What will remain is that it is unfair to the individual during a pause order because the employee loses a contractual and statutory right to contributions, and the employer fails to honour a statutory and contractual obligation to make contributions. Unless the Minister wishes to direct me to a provision in the Bill, I can find nothing that protects the individual or the employer from breaches in those statutory provisions.

Unfortunately, I do not have with me the letter that the Pensions Minister wrote to my noble friend Lord McKenzie and me in response to a meeting of Peers on 8 November, where the Minister conceded that the Government had not fully considered a provision that would allow those contributions to be held in some alternative vehicle while the pause order was in place. As the noble Baroness, Lady Altmann, has said, there is a breach of a statutory obligation potentially arising from a term within this Bill.

The Pensions Regulator need not hold the funds. The Pensions Regulator would clear the arrangements, consistent with any regulations that were set, but the holder of the funds could be an alternative operator or provider, which regulation or the Pensions Regulator could choose to identify. The records that come in from the employer should still be possible because, immediately before the pause order, the employer would have to provide records of contributions collected and paid. No failure is being posed in terms of the employer, so records should be available for reconciliation quite quickly if those contributions are held in some kind of cash account or cash fund.

I note the Minister's comment that the Pensions Regulator has a discretion as to what payments it does or does not prevent being paid out during a pause order, but it is concerning that we do not have clarity on the policy thinking around how those with serious ill health or real income dependency on their savings would be dealt with in a pause order situation, should they be embraced or potentially embraced by the terms of the order. I fully understand the need for an exceptional power, if evidence of fraud emerges in the records, for the regulator to have some control over payments made or contributions received, but at the moment the way in which it is proposed that this pause order would operate seems unfair on the individuals, puts the employer in breach of a statutory obligation and leaves unclear what protections would be afforded to the most vulnerable who may be impacted by that pause order.

Lord Freud: Let me just respond. The difference is that we are trying to get control of an obviously difficult situation. The pause is to allow the regulator to go in and make sure that the situation is sorted. We are not talking about keeping the flow of things going in a normal way; we are talking about a very difficult situation. We are worrying about losing the money that is already there, not about the smooth flow. We are typically talking about a very short period. Setting up large paraphernalia, which the noble Baroness is beginning to drift towards, would not be the point. The real point is to get the funds transferred as quickly as possible.

The noble Baroness asked where the legislation is. I can direct her to Clause 31(5)(c), which states that any contributions not paid over to the scheme are returned

[Lord Freud]
to the member, and paragraph 13 of Schedule 3, which ensures that the pause order will not cause employers to fall foul of their legal duties. I hope that that helps the noble Baroness in her consideration of what we are doing.

Baroness Altmann: I have a couple more probing questions for my noble friend. The pause order is obviously intended to be used only in exceptional circumstances and in extreme concern about the solvency or probity of the master trust itself. I can certainly understand that, in that situation, one would not want to take any new employers, so it would pause adding any new employers. But it still seems that there is no protection for the ongoing accrual of members' pension benefits, which is what we are trying to do with auto-enrolment. If the procedures suggested in the amendments in the names of the noble Baroness, Lady Drake, and the noble Lord, Lord McKenzie, are not considered appropriate—in other words, for the regulator itself to collect in the contributions—would it not be prudent at this stage and before the legislation is passed to have a proper plan for how ongoing contributions can be made and collected, perhaps through some form of bulk defined contribution transfer, even on a temporary basis, for members without consent to another master trust? At this stage we should produce such a plan rather than wait and hope that it will be okay.

Lord Freud: I am grateful to my noble friend. There are different processes going on and the intention of the pause order is not to be the paraphernalia for sorting out a scheme that is in difficulty. What we are looking at is a process we can go to where we can discuss option 1 and option 2 in order to transfer the funds to a better functioning scheme. While we are doing that, we are pausing it to allow the process to happen. It is important to view the two things on more of a sequential basis than trying to make a big performance of the pause order. It is there for a different reason: it allows us to get on with sorting out the scheme and making the transfers that my noble friend is looking for.

Baroness Drake: I thank the Minister. He has said that the pause order will be short, but the problem is that the noble Lord contradicts himself because the Government have just tabled their Amendment 52 which removes the six-month limit on a pause order. That implies that situations are anticipated where the pause order would need not to be short and certainly in excess of six months.

I am certainly not looking for complicated paraphernalia here, although I would suggest that working through whether individuals are due a refund of contributions and sorting out the tax implications of such a refund could indeed be very complicated. My noble friend and I have suggested something simpler. The employer will still have the statutory obligation so it will have its records and collect the contributions. It was a question of having something simple for holding those contributions during the period of the pause order so that they can subsequently be reconciled against the individual members; it certainly does not need to be overly complicated.

I accept the noble Lord's point that the driving force for a pause order is to deal with a threat to the assets or the scheme members' interests in general, but in resolving that bigger problem it appears that the detail of the route being taken is unnecessarily unfair in terms of its impact on the statutory and contractual rights of individuals to continue having access to pension savings. I think that we have gone into the detail of this issue at some considerable length in this exchange, but I do feel that the Government have not explained satisfactorily why the contributions cannot be held during the pause order without believing that this needs to be terribly complex. They have not addressed the issue that this will put individuals in a position where they are denied their statutory and contractual rights for a period, and an employer in breach of its statutory duties, and there remains a lack of clarity in thinking about the impact on vulnerable people in the manner in which the pause order is introduced. However, at this stage I beg leave to withdraw the amendment.

Amendment 45 withdrawn.

Amendment 46 not moved.

Amendment 47

Moved by ***Lord Freud***

47: Clause 31, page 22, line 11, at end insert—

"(ca) a direction that no benefits (or no specified benefits) are to be paid to or in respect of any members (or any specified members) under the scheme rules;"

Amendment 47 agreed.

Amendment 47A not moved.

Amendment 48

Moved by ***Lord Freud***

48: Clause 31, page 22, line 36, at end insert—

""pension credit" means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;"

Amendment 48 agreed.

Clause 31, as amended, agreed.

Schedule 1: Pause orders

Amendment 49

Moved by ***Lord Freud***

49: Schedule 1, page 30, line 26, at end insert ", and

(ii) a direction under section 31(5)(ca) does not prevent the payment becoming due."

Amendment 49 agreed.

Amendment 50 not moved.

Amendments 51 and 52

Moved by ***Lord Freud***

51: Schedule 1, page 31, line 23, at end insert—

"(6A) Regulations under sub-paragraph (6) override any provision of the Master Trust scheme, to the extent that there is a conflict."

52: Schedule 1, page 31, line 40, leave out from "effect" to end of line 41 and insert "for a further three months."

Amendments 51 and 52 agreed.

Amendment 53 had been withdrawn from the Marshalled List.

Schedule 1, as amended, agreed.

Clauses 32 to 36 agreed.

4 pm

Schedule 2: Master Trusts operating before commencement: transitional provision

Amendment 54 not moved.

Amendment 55

Moved by ***Lord Freud***

55: Schedule 2, page 37, line 16, leave out "application has not yet been determined" and insert "decision on the application has not yet become final (see section 35)"

Lord Freud: I thank noble Lords for allowing me to speak to these amendments. Once again, please accept my sincere apologies for proposing these amendments now rather than including them in the draft Bill as introduced. Most of my proposed amendments modify the procedures the Pensions Regulator must follow when exercising some of the new functions introduced by the Bill.

Amendments 58 to 65 and Amendments 73 and 76 change the procedure that the regulator must follow when making a decision on an application for authorisation from an existing master trust scheme. The majority of the Pensions Regulator's statutory functions are exercised through internal procedure known as "standard procedure", with "special procedure" applying to certain functions where there is an immediate risk to members or assets. These procedures are set out in the Pensions Act 2004. The Bill as introduced provides for standard and special procedure to apply to the power to grant or refuse authorisation to an existing master trust scheme. However, on further consideration, we do not believe that some of the steps involved in these procedures would be appropriate.

The standard procedure provides for the issuing of a "warning notice" to such persons who, in the view of the regulator, would be directly affected by the regulatory action under consideration. They would then have the opportunity to make representations before a decision could be made about whether to exercise the regulatory function. This means that the Pensions Regulator would be obliged to send the trustees of an existing scheme such a notice after the trustees submit an application for authorisation.

In this instance, the regulatory action the notice would refer to would be the power to grant or refuse authorisation. It would not be necessary to warn the trustees that the regulator intends to take this regulatory action and make this decision, nor would it be appropriate to invite further representations at this point as the trustees would have submitted all necessary representations in their application. Special procedure, which dispenses with the warning notice and representations steps in the first instance, could be used only when the regulator considers there is an immediate risk to the interests of the members or assets of the scheme.

Amendments 58 to 65 and Amendments 73 and 76 would align the process of deciding whether to grant authorisation to an existing master trust with the process the Bill specifies for making this decision for new schemes. However, the amendments retain the requirement that the decision to grant or refuse authorisations must be made by the determinations panel of the Pensions Regulator. This is appropriate because in both situations a scheme operating in the market will be required to transfer members out to an authorised master trust scheme and to wind up. The impact of this is significant, and under these circumstances it is appropriate for the determinations panel to make the decision. The amendments I propose would maintain rights of appeal to the First-tier or Upper Tribunal should the decision be to refuse authorisation. The amendments would simply remove unnecessary steps and delay.

Amendment 55 has a slightly different purpose. It would ensure that if an existing master trust scheme—that is, a master trust in operation before the commencement date—submits an application for authorisation and the Pensions Regulator decides to refuse authorisation, it would not have to commence the process of transferring members out and winding up until any appeals are disposed of.

The final amendments I seek to move within this group are Amendments 72 and 77, which also deal with changes in procedure, but in relation to different regulatory powers within the Bill. The regulator has a power to direct the trustees of an authorised master trust to comply with the requirements of Clause 26 in relation to the implementation strategy. Where there is no strong reason to specify a different procedure, it is right that the regulator's functions should be subject to the standard procedure, and for this reason Amendment 72 makes this power to direct subject to that procedure. In addition, where the trustees of a master trust should be following an approved implementation strategy but are failing to do so, under Clause 28(4) the regulator has the power to direct the trustees to pursue the continuity option identified in the strategy and to take such steps as are identified in the strategy to carry it out.

Amendment 77 makes this a power which can only be exercised by the determinations panel under standard procedure. The Government consider this appropriate, as it is a power which may have a significant impact on the scheme and its members. I hope I have given a thorough explanation of my proposed amendments. I thank noble Lords again for bearing with me in bringing these amendments at this stage of the Bill process, and I beg to move.

Lord McKenzie of Luton: My Lords, I thank the Minister for his full explanation of these provisions. I am bound to say that we would like to study them a bit further and bring something forward on Report, if necessary, but I thank the Minister and the Bill team for supplying us with a Keeling schedule, which made these provisions somewhat less impenetrable than they might otherwise have been. As far as the panel is concerned, we discussed the issue of resources available to the regulator before. Will the determinations panel have the necessary resources available to it, and how speedily can it act and pick up these matters?

[Lord McKenzie of Luton]

I have two brief questions on Amendments 73 and 76, which delete particular provisions in the Bill. Amendment 76, for example, deletes:

"The power to grant or refuse authorisation of a Master Trust scheme in operation on the commencement date under section 5".

I presume that power is being deleted because it flows to the determinations panel, but will the Minister just clarify that for us?

Lord Freud: I am pleased to do that. My understanding is that the second assumption is correct: Amendment 76 moves it over to the determinations panel and I spelled out last Monday the process by which we will get the financial resources required by the Pensions Regulator. Clearly, one of the issues in that process will be the funds required to operate the determinations panel.

Amendment 55 agreed.

Amendment 56

Moved by ***Lord McKenzie of Luton***

56: Schedule 2, page 37, line 39, leave out "six" and insert "three"

Lord McKenzie of Luton: My Lords, this small, probing amendment would reduce the application period from six months to three. It was conceived by seeking to deal with the question: for how long can an authorised master trust remain in operation unauthorised under these provisions? That is what sparked the thoughts. I acknowledge that the consequential amendment to paragraph 8(7), which should have followed, has not been made, so in effect we have just part of the amendment here.

The purpose of this probe is to test the rationale for the length of the period during which an existing master trust can continue to operate without authorisation. As it stands, a master trust must apply for authorisation by the end of the application period. The application period in the Bill is six months—three in our amendment—beginning with the commencement date. The commencement date is the date on which Clause 3—"Prohibition on operating a scheme unless authorised"—comes into force, which is to be fixed by the Secretary of State but is expected to be some two years away. The Pensions Regulator must make a decision on the application within six months and, if it is refused, can be referred by the trustees or others to the tribunal.

From today, absent an appeal, an existing master trust could remain in operation for two years before the commencement date; then there are six months before it applies, with a six-week extension, and six months during which the Pensions Regulator must give it consideration, assuming that there is no appeal. This is potentially a long time. It is accepted that the transitional provisions will be in place from the date the Act is passed, or 20 October, concerning triggering events, the prohibition on increasing charges and the scheme funder's liability for the costs of winding up the scheme. Of course, all this is happening nearly two years after the commencement of auto-enrolment, which has been the spur to the growth of master trusts.

My plea is: should we not be making faster progress? Given the commitment to consult on regulations, the shape of the detail required for an application will surely be evolving long before the commencement date. Is there not a way we can make faster progress in this very important area, where billions of pounds of people's investments are at risk? I beg to move.

Lord Young of Cookham (Con): My Lords, as we have just heard, the amendment tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, would reduce the time period an existing master trust scheme will have in which to apply for authorisation from the commencement of the relevant provisions of the Bill from six to three months. While I have some sympathy with the amendment, for the reasons set out by the noble Lord, the Government's view, which is informed in part by the Pensions Regulator, is that there is a compelling case for allowing a maximum of six months.

My expectation is that some schemes will have relatively little to do in order to align their businesses with the new requirements and, as a result, will be in a position to apply for authorisation early in the six-month application window. Others may face more of a challenge and may need time to consider the final legislation in full—including, of course, the regulations, which will come out next year—before they determine whether to apply for authorisation or withdraw from the market. We do not want to risk losing good schemes from the market because they have not had sufficient time to make the necessary changes to meet these new requirements. Having consulted the regulator, our view is that six months will give schemes the time they are likely to need.

I appreciate the noble Lord's concern that members should be protected as quickly as possible but we must get the balance right between achieving that and placing demands on existing businesses. As I think the noble Lord recognised in his remarks, an additional key protection for members is set out in the Bill, which will apply from the beginning of the application window. This is in addition to the retrospective provisions in the Bill, which mean that a scheme that experiences a triggering event from 20 October this year will be unable to increase charges on members to pay for scheme wind-up. The additional protection is that if a scheme experiences a triggering event during this period, and the regulator has reason to believe that there is an immediate risk to the interests of scheme members, the regulator will have the ability to issue a pause order under Clause 31, which we have just been discussing, regardless of whether or not the scheme has submitted an application for authorisation.

Finally, on the overall length of time it will take, as the Bill stands, from the date on which regulations fully commence master trust schemes will have six months to submit an application for authorisation. The Pensions Regulator will then have six months from the point of receiving an application to decide whether to grant or refuse authorisation. This means that the vast majority of existing schemes will be either authorised or not authorised within one year of full commencement. Where trustees are unsuccessful,

they can appeal to the First-tier Tribunal or the Upper Tribunal. The master trust will be able to continue operating pending the outcome of that appeal.

4.15 pm

Although I understand the noble Lord's desire to ensure that the schemes become authorised quickly—after all, the whole purpose of the Bill is to move to a position where all master trust schemes operating in the market have satisfied the Pensions Regulator that they meet the requirements for authorisation—we must strike a balance between increasing protection for scheme members and placing requirements on the master trust industry. Having consulted the Pensions Regulator, the Government's view, as I said, is that allowing six months for applications from the commencement of regulations strikes the right balance. For those reasons, I invite the noble Lord, Lord McKenzie, to consider withdrawing his amendment.

Lord McKenzie of Luton: My Lords, I thank the Minister for his reply—which was not unanticipated. I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Amendment 57

Moved by ***Lord Young of Cookham***

57: Schedule 2, page 38, line 9, at end insert—

"3A Existing Master Trust schemes: pause orders

(1) This section applies where the trustees of an existing Master Trust scheme have applied for authorisation of the scheme under section 4 and the decision on the application has not yet become final (see section 35).

(2) The Pensions Regulator may make a pause order in relation to the scheme if it is satisfied that—

(a) there is, or is likely to be if a pause order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and

(b) it is necessary to make a pause order to protect the interests of the generality of members of the scheme.

(3) A pause order under this section is to be treated as if it is made under section 31.

(4) But in its application to a pause order under this section, paragraph 2 of Schedule 1 is to be read as if sub-paragraph (3) were omitted.""

Lord Young of Cookham: My Lords, government Amendment 57 would allow the Pensions Regulator to issue a pause order to an existing master trust at any point between the scheme submitting an application for authorisation and the decision on the application becoming final, regardless of whether or not a triggering event has occurred in relation to that scheme. Once an existing scheme has submitted an application for authorisation, the Pensions Regulator will have access to a significant amount of new information about the scheme. That information may alert the regulator to members' interests or assets being at risk in the scheme. Clearly, the regulator will not grant authorisation in such circumstances but it needs to be able to take immediate steps to protect the members.

A decision to refuse authorisation is one which must be taken by the determinations panel. It is right that this is so, but it means that there could be a period of time between the regulator recommending to the determinations panel that the scheme should not be authorised and the panel reaching its decision. During this time, the interests of scheme members need to be protected. The Government's proposed amendment therefore provides that the Pensions Regulator may make a pause order in relation to a master trust scheme which has submitted an application for authorisation,

"if it is satisfied that—

(a) there is, or is likely to be if a pause order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and

(b) it is necessary to make a pause order to protect the interests of the generality of members of the scheme".

These conditions mirror those we have just been discussing for making a pause order following a triggering event.

The proposed amendment would introduce an important protection for the members of existing master trust schemes during the period when such schemes are applying for authorisation. In the light of what my noble friend Lord Freud has just said, I too apologise for not making this provision in the Bill as introduced, and I beg to move.

Baroness Drake: My Lords, I intervene at least for the record. It is absolutely understandable why the Government seek to extend the pause-order powers to a master trust which has not yet received authorisation if the members' interests are at risk. I will not repeat the arguments that I made when speaking to Amendments 46 and 50, but they remain valid here. During the period of the pause order which is applied in this circumstance, the issues of what happens to the contributions to which members would otherwise be entitled and how those vulnerable to loss of payments during a pause order are treated remain equally valid under this provision as under the previous one. However, I understand why one would want to extend the pause-order power to an unauthorised scheme.

Amendment 57 agreed.

Amendments 58 to 65

Moved by ***Lord Freud***

58: Schedule 2, page 38, line 10, leave out from "if" to end of line 19 and insert "at the end there were inserted—

"(7) In the case of a notification under subsection (5) relating to an existing Master Trust scheme, the notification must also include an explanation that the decision is a triggering event for the purposes of sections 20 to 33A, and of the trustees' duties under those sections.

(8) In relation to an application received under section 4 from the trustees of an existing Master Trust scheme, the functions of the Regulator under this section are to be exercised by the Determinations Panel on behalf of the Regulator.

(9) In subsection (8), "the Determinations Panel" means the committee established under section 9 of the Pensions Act 2004.""

59: Schedule 2, page 38, line 20, leave out paragraph 10

60: Schedule 2, page 38, line 26, leave out paragraphs (a) and (b) and insert—

"(a) in subsection (2)—

(i) after "2" there were inserted ", 2A";

(ii) after "withdraw" there were inserted "or refuse";

(b) in subsection (5)(c)—

(i) after "2" there were inserted "or 2A";

(ii) after "withdraw" there were inserted "or refuse";

(iii) after "withdrawn" there were inserted "or refused";

(c) in the table in subsection (6), after the row for item 2 there were inserted—

"2A.	The Pensions Regulator notifies the trustees of an existing Master Trust scheme of the Regulator's decision to refuse to grant the scheme authorisation.	The date on which the notification is given.";

(d) in that table, in the triggering event described in item 3, for "3(3)" there were substituted "3(4)"."

61: Schedule 2, page 38, line 38, leave out from "if" to end of line 40 and insert "—

(a) in subsection (2)(a)—

(i) after "2" there were inserted "or 2A";

(ii) after "withdraw" there were inserted "or refuse";

(b) in subsection (3)(a), after "2" there were inserted ", 2A"."

62: Schedule 2, page 38, line 41, leave out from "if" to end of line 43 and insert "—

(a) in subsection (2)—

(i) after "2" there were inserted "or 2A";

(ii) after "withdraw" there were inserted "or refuse";

(b) in subsection (3), after "2" there were inserted ", 2A"."

63: Schedule 2, page 38, line 43, at end insert—

"13A_ Section 28 (duty to pursue continuity option) has effect as if, in subsection (3)(a), after "2" there were inserted ", 2A"."

64: Schedule 2, page 38, line 46, leave out paragraphs (a) and (b) and insert—

"(a) in subsection (1)—

(i) after "2" there were inserted "or 2A";

(ii) after "withdrawn" there were inserted "or refused";

(b) in the table in subsection (3), in the first column (triggering event) for "Item 1 or 2" (in both places) there were substituted "Item 1 or 2 or 2A (decision to refuse to authorise existing Master Trust scheme);

(ba) in that table, in the first row for item 1 or 2 or 2A, in the second column (circumstances),—

(i) in point 1, after "determination" there were inserted "or decision";

(ii) in point 2, after "withdrawn" there were inserted "or refused";

(bb) in that table, in the second row for item 1 or 2 or 2A, in the second column (circumstances), in point 2, after "withdrawn" there were inserted "or refused";

(bc) in subsection (4), at the end there were inserted—

"(c) section 6(2), in a case where that section applies.";"

65: Schedule 2, page 39, line 12, leave out paragraphs (a) and (b) and insert—

"(a) in subsection (1)—

(i) after "2" there were inserted "or 2A";

(ii) after "withdraw" there were inserted "or refuse";

(b) after subsection (1) there were inserted—

"(1A) This section also applies for the purposes of determining the date on which the decision on an application for authorisation of an existing Master Trust scheme becomes final for the purposes of section 3(1)(b).";

(ba) in the table in subsection (3), after the row for item 2 there were inserted—

"Item 2A (notification of decision to refuse to grant authorisation to existing Master Trust scheme)	1. The Pensions Regulator decides to refuse to grant authorisation to an existing Master Trust scheme, and 2. there is no referral of the Regulator's decision to the Tribunal within the time period allowed for doing so.	The date of the Regulator's decision."

(bb) in that table—

(i) in the first column, for "Item 1 or 2" (in both places) there were substituted "Item 1 or 2 or 2A";

(ii) in the first row for item 1 or 2 or 2A, in the second column, in point 2, after "withdrawn" there were inserted "or refused";

(iii) in the second row for item 1 or 2 or 2A, in the second column, in point 2, after "withdrawn" there were inserted "or refused";

(bc) in subsection (4), at the end there were inserted—

"(c) section 6(2), in a case where that section applies.";"

Amendments 58 to 65 agreed.

Schedule 2, as amended, agreed.

Clause 37 agreed.

Schedule 3: Minor and consequential amendments

Amendments 66 to 77

Moved by ***Lord Freud***

66: Schedule 3, page 39, line 31, after "of" insert "and Schedule 1 to"

67: Schedule 3, page 39, line 35, after "of" insert "and paragraph 1(6A) of Schedule 1 to"

68: Schedule 3, page 39, line 38, after "of" insert "and Schedule 1 to"

69: Schedule 3, page 39, line 42, after "of" insert "and paragraph 1(6A) of Schedule 1 to"

70: Schedule 3, page 40, line 5, after "of" insert "and Schedule 1 to"

71: Schedule 3, page 40, line 9, after "of" insert "and paragraph 1(6A) of Schedule 1 to"

72: Schedule 3, page 40, line 39, at end insert—

"9A_ In section 93(2) ("regulatory functions" of the Regulator subject to procedure), omit the "and" at the end of paragraph (p) and after that paragraph insert—

"(pa) the power to give a direction under section 26(7) of the Pension Schemes Act 2017 (direction to submit implementation strategy), and"."

73: Schedule 3, page 40, leave out lines 42 to 44

74: Schedule 3, page 41, line 15, after "of" insert "and Schedule 1 to"

75: Schedule 3, page 41, line 19, after "of" insert "and paragraph 1(6A) of Schedule 1 to"

76: Schedule 3, page 41, leave out lines 24 and 25

77: Schedule 3, page 41, line 27, at end insert—

"44BA_ The power to give a direction under section 28(4) (direction to pursue continuity option)."

Amendments 66 to 77 agreed.

Schedule 3, as amended, agreed.

Clause 38 agreed.

Clause 39: Regulations modifying application of Part 1

Amendment 78 not moved.

Clause 39 agreed.

Debate on whether Clause 40 should stand part of the Bill.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, on the face of it, Clause 40 on the power to override contract terms appears sensible to most people. While there may be very good reasons why the Secretary of State may wish to override provisions contained in some pension schemes, I believe that the House would want to be reassured that it was absolutely necessary.

People I have talked to about my concerns over this power all say the same thing: the Government are always overriding contracts. In other words, get used to it. However, I find this quite difficult to come to terms with. As noble Lords know, I come from a local government background, where every contract has to go out to tender, even if it is too small to hit the OJEU rules. It is expected that at least three quotes will be obtained. Once initial quotes are obtained, haggling often begins on the bigger contracts, and a lot of lawyers are involved before the contract is finalised, signed and executed. The contract start date is agreed and eventually the service contracted for is begun.

Quite small parish councils also adhere to the rule that quotes must be obtained before a service contract or purchase can properly be made. It is, after all, council tax payers' money that is being spent by parish, district, county and other local authorities. Due process has to be followed. If a contract that has been correctly drawn up, tendered for, signed and legally agreed were overridden by the local authority in question, there would be very serious consequences—and even, perhaps, central government intervention.

But here we see that the Government are proposing that contracts that have been legally executed, agreed and signed can be overridden summarily by the Secretary of State. Of course we want to be reassured that the interests of pensioners and their pension pots are protected, and we all want to ensure that all steps are taken to make that happen—but do we really need such a draconian step to facilitate this?

I originally felt that this clause set a very dangerous precedent. But I now understand that Secretaries of State do this all the time, so it quite clearly does not set a precedent as the practice already exists. I will therefore confine my comments to the Minister to asking: does he not feel that this is setting double standards for those who hold elected office and are in positions of authority? One rule exists for governance at local authority level and a completely different set of rules exists for central government. Does the Minister feel that this is likely to generate trust and confidence in central government—or, as I feel, that it will do quite the reverse?

Lord McKenzie of Luton: My Lords, I will comment briefly. I find it difficult to support this proposition. The noble Baroness drew attention to contracting in local authorities, and we understand that—a number of us have been there. But is not the key issue here that the market does not produce the right result? There is weakness on the buyer side, and given the complexity of the product, you need some specific provision to deal with that. We are dealing here of course with a ban on member-borne commission and a cap on early exit charges. The latter in particular is seen to be an inhibitor to people accessing their pensions—indeed, the evidence is clear that it is an inhibitor. If those issues have to be addressed, then we have to use the mechanisms which are at hand. I agree that causing an override of these contract provisions is not the most comfortable mechanism, but it already exists in relation to scheme details, I understand, between the FCA and contract-based schemes, and this extends it to deal with other contractual arrangements relating to schemes.

I am afraid that this proposition does not have our support. We think it is important that we go ahead and get the ban on member-borne commission and the cap on early exit charges in place as soon as possible. On that latter point, I am bound to say we are somewhat disappointed. We are pleased to see the press release from the Minister announcing a cap of, I think, 1%, or 0% for new provisions. But it is will be October next year before that is in place, which again seems a little bit tardy, because the FCA is moving to get the restrictions in place by the end of March.

Lord Kirkwood of Kirkhope (LD): My Lords, I will add my voice to commend the merits of my noble friend's position. I understand what the noble Lord, Lord McKenzie, says, and I understand too the grave situation and the need for protection, but as I have said before—the Minister was sensitive enough to pick it up the last time we discussed this—the provision of an override completely freezes the responsibilities and duties of the trustees. There is a master trust here, which presumably—I cannot see any way round this—has a trust deed which sets out the rules and responsibilities. The provisions in this clause do not just override the contracts but run a coach and horses through the trust deed and the responsibilities of the trustees. It is effectively a vote of no confidence in the trustees, as far as I can interpret how this is to be used, and that is an extremely serious situation.

In the past, trust law has served pension provision well in this country. In addition, there are extremely onerous fit-and-proper-person tests in the earlier clauses

[Lord Kirkwood of Kirkhope]
of this Bill. The assumption should be that people of good faith and knowledge and experience will not get into these positions at all. We have always been able to rely, in the main, on trustees doing their duty well, but this clause gives them no chance to do that. It sets them aside and is a vote of no confidence in what they do. If I was in that position, I would resign as a trustee—and if the trustees of the master trust resign, then the pause period might be not just three months or six months but a lot longer. My position in supporting careful consideration of this clause before we vote it into law is not just about the important points my noble friend made but about how this will impact on the assumption and service of trustees. If I was invited to become a master trustee in these circumstances, I would look twice at the provisions in this clause before agreeing to do any such thing.

4.30 pm

Lord Young of Cookham: My Lords, it is quite right that we debate whether this clause should stand part of the Bill, because it is an important one. I hope to persuade noble Lords who have spoken that the powers we are taking are proportionate and indeed necessary in order to deliver the commitments that the Government have made to beneficiaries of pension schemes. As the noble Lord, Lord McKenzie, said, we are seeking here to bring occupational pensions into line with the regime that already exists for other pensions.

In a nutshell, the clause amends existing legislation in Schedule 18 to the Pensions Act 2014 to allow regulations to be made that enable a term of a relevant contract to be overridden to the extent that it conflicts with a provision in those regulations. I emphasise that the power would allow a contract to be overridden only where there is a conflict with a provision in regulations. This ensures that relevant contracts are consistent with the regulations, and provides certainty to the parties involved. It may be helpful if I clarify that Clause 40 is distinct from the previous clauses in this Bill that referred to charges; those clauses all relate to the proposed master trust authorisation regime.

We intend to use Clause 40, alongside existing powers in the Pensions Act 2014, to make regulations to cap or ban early exit charges. Early exit charges are any administration charges that are paid by a member for leaving their pension scheme early when they are eligible to access the pension freedoms, which they would not face at their normal retirement date. The Financial Conduct Authority intends to make rules by April 2017 to cap or ban early exit charges in personal and workplace personal pension schemes. Parliament has already approved amendments to the Financial Services and Markets Act 2000, which broadly allows contracts to be overridden.

Together with the existing powers in relation to charges, Clause 40 will enable us to make regulations that introduce similar protection to members of occupational pension schemes. It will also be used to override contractual terms that conflict with the ban on member-borne commission arising under existing contracts in certain occupational pension schemes. By "commission contracts" we mean the contracts between trustees or managers and a person who provides administrative services to the scheme, which permits the person to impose the member-borne commission charge. Existing contracts are those that were entered into before 6 April 2016. This will complete the ban that already exists for commission arrangements entered into on or after 6 April 2016.

The consultations that we undertook on early exit charges and on member-borne commission showed us that these charges generally arise in contracts between trustees or managers of certain occupational pension schemes and those who provide administration services to the scheme. Our existing powers in Schedule 18 to the Pensions Act 2014 enable us to make regulations that override any provision of a relevant scheme where it conflicts with a provision in those regulations. For example, we have used that power in relation to the appointment of service providers in the scheme administration regulations. The reason why we are taking this power is that this does not extend to the contracts under which the charges arise. Clause 40 therefore extends the existing power in Schedule 18 to allow the overriding of a term of a relevant contract that conflicts with a provision of the regulations. The relevant contract is defined as those between a trustee or a manager of a pension scheme and someone providing services to the scheme. The regulations that we intend to make will apply to charges imposed from the date when the regulations come into force, even where they are charged under existing contracts. We expect them to come into force in October 2017.

As noble Lords may be aware, the pensions market is continually evolving and modernising, and this extends to charging practices. It may be necessary to alter the charges requirements to reflect any changes in the pensions market that may disadvantage members. We intend to consult on the draft regulations early next year. In addition, any potential further regulations made under the power in Clause 40 will be subject to public consultation. The requirement to do this is set out in paragraph 8 of Schedule 18 to the Pensions Act 2014.

Such regulations would also be subject to parliamentary scrutiny through the negative resolution procedure. I note that this House's Delegated Powers and Regulatory Reform Committee was content with this approach. This allows legislation to be amended reasonably quickly to provide the member protection that may be needed. Together with the consultation, we believe there is effective scrutiny and scope for challenge over the Government's intended use of these powers.

I would be disappointed if any trustees felt that they had to resign over this. I regard these measures as benefiting scheme members, for whom trustees are acting to defend their interests. In response to the charge that we are interfering with contracts signed in good faith, we consulted on this. We made it clear that it is generally undesirable to interfere with existing contractual rights; it can be justified only in circumstances such as this, where it is necessary to achieve important public policy goals—we have given a commitment to do this—and where the action is proportionate in the public interest. We expect trustees and service providers to work together when renegotiating for amending contracts to reflect implementation of the charge cap,

and our consultation and engagement with the pensions industry and other stakeholders on capping or banning early exit charges and spanning existing member-borne commission showed that, by and large, the Government's intentions were widely welcomed. We continue to engage with industry and stakeholders on those two areas.

I hope that I have convinced the House that the clause should stand part of the Bill.

Baroness Bakewell of Hardington Mandeville: My Lords, I thank all noble Lords who have taken part in this short debate, especially my noble friend Lord Kirkwood of Kirkhope. I am reassured by the Minister saying that it is undesirable generally to interfere with contractual rights, completely concur that we must have member protection and welcome the public consultation that will take place in the near future. I am also reassured by much else that the Minister said and am content for the clause to stand part of the Bill.

Clause 40 agreed.

Amendment 79

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

79: After Clause 40, insert the following new Clause—

"Offence of unsolicited communications to members of pension schemes

(1) It is an offence for a person to make an unsolicited telephone call, or to send unsolicited electronic mail or other communications via an electronic communications network, for the purpose of inducing a member of a pension scheme to use their pension savings in a particular way, or otherwise to make changes to their existing pension scheme arrangements.

(2) It is an offence for a person to instigate the making of an unsolicited telephone call, or the sending of unsolicited electronic mail or other communications via an electronic communications network, for the purpose set out in subsection (1).

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or a fine (or both).

(4) In this section, "call", "electronic mail", "communications" and "electronic communications network" have the meanings given in regulation 2 of the Privacy and Electronic Communications (EC Directive) Regulations 2003."

Baroness Bakewell of Hardington Mandeville: My Lords, I am pleased that the Government have responded to the online petition calling for cold calling by phone or email for investment or pensions to be made illegal. This is definitely a step in the right direction. This positive change of heart was trailed over the weekend of 19 to 20 November and reiterated in the Chancellor's Autumn Statement in the other place on Wednesday 23 November. This was welcome, but did not give the level of detail we had been hoping for.

As we are all aware, cold calling on investments and pensions to members of the public often leads to unregulated investments and scams. Banning cold calling would dramatically reduce the number of people falling prey to fraudsters and losing their savings and pensions. There is already sufficient unease among those anxious about their savings and future pensions for this added anxiety to be sufficient to push some vulnerable people over the edge. The scams tend to be presented as unique investment opportunities, such as putting your pension pot into a new hotel in an exotic location or supposedly ethical projects that promise huge returns. It is all too easy for people to be sucked into schemes which will not deliver on the promises made by slick salesmen. They are, after all, looking for absolutely the best deal for their future savings which will ensure them the happy, carefree retirement they have been looking forward to for years.

A recent survey points to the threat of fraud as those near retirement age refuse to seek expert guidance, revealing that almost nine in 10 people miss common warning signs of pension scams. Under the changes announced by the Chancellor, it is assumed that all calls relating to pension investments where a business has no existing relationship with the individual will be forbidden. Similar rules already cover cold calls relating to mortgages. Can the Minister confirm that the pensions issue will be treated in the same way?

It has also been trailed that companies flouting the ban could face fines of up to £500,000 from the Information Commissioner, although the watchdog does not have powers to tackle firms operating outside the UK. Can the Government confirm that they are considering custodial sentences as well as fines for perpetrators of fraudulent cold calling scams? Pensions firms will be given more powers to block suspicious transfers, preventing people's life savings being transferred without any checks. The rules will also stop small, self-administered schemes being set up using a dormant company such as a sponsoring employer. Research has suggested that scammers could be behind as many as one in 10 pension transfer requests. Do the Government have up-to-date figures for the levels involved?

The Government appear to be acting after the recent petition calling for action was signed by thousands of people, including former Pensions Ministers, the noble Baroness, Lady Altmann, and Steve Webb. Martin Lewis of the website Money Saving Expert, and a number of independent financial advisers, have also requested that pension cold calling be made illegal. The Government's response is to be welcomed, but a little more detail would have been helpful. Can the Minister say when the consultation trailed in the Autumn Statement will begin? How long will the consultation run for? How quickly after the consultation ends will the results be made public? Will all cold calling targeting pensioners be banned, or only certain schemes?

To ensure that pensioners and the general public retain confidence that the Government are serious about tackling this very serious problem, as much information as possible needs to be in the public domain, not least exactly when the ban on cold calling will commence. It is assumed that this will be once the consultation has finished, but it will be important that transparency exists on how quickly a decision will be made and when the implementation date is due. I look forward to the Minister's response and beg to move.

Baroness Drake: My Lords, I support the amendment in the name of the noble Baroness, Lady Bakewell, and I welcome the announcement in the Budget that the Government will consult on options to address this issue of scams and unsolicited contact, including

[Baroness Drake]
a ban on cold calling, greater powers for firms and schemes to block suspicious transfers and making it harder for scammers to abuse small self-administered schemes. The compelling findings of Citizens Advice align with those of other organisations. For example, the City of London police report that the amount lost to fraud after the freedom reforms were introduced in April 2015 was £13.3 million and rising. That figure does not even include the money moved out of a pension scheme into another investment vehicle, which means the total amount lost since the reforms is likely to be much higher.

The Pensions Advisory Service has handled many calls seeking guidance from members of the public who have been subject to unsolicited approaches, have been scammed and have lost, or are at real risk of losing their savings. There is the self-employed man who transferred all his savings from a reputable insurance company to a property-based pension scheme, and now all his money has disappeared; the public sector worker who transferred £64,000 of savings to another scheme and has not heard anything since; or the ex-employee of a well-known car manufacturer, who transferred 20 years' worth of DB pension rights—£20,000 was taken in charges, and now he cannot access the rest of his savings. These cases are just the tip of the iceberg. There are many more desperate cases, involving even bigger amounts.

Cold callers, suspicious transfers and the abuse of small, self-administered schemes all require attention. TPAS experience confirms that scams cover a wide spectrum, from mis-selling, to incompetence, to outright theft and fraud: such as selling a high-risk, unregulated investment to someone who does not understand the implications; encouraging someone to cash in their pot and invest in a high-risk investment within a pensions wrapper; transferring the whole of someone's pension savings to a small self-administered scheme which is not a regulated financial product, to facilitate unregulated investments; and the use of SIPPs, which are a regulated product, by scammers for unregulated investments. There are many more such examples, and of fraud, through which 70% or more of the pension fund is stolen.

4.45 pm

It is really important that the Government map the scam problem, so that the actions they take are fit for purpose. When savers transfer their pension money through a scam vehicle, the prospect of recovering their funds is incredibly remote. The ban on cold calling is absolutely necessary, but not of itself sufficient. A comprehensive set of measures will be needed, including raising customer awareness. Ideally, in the design of the pensions guidance service, savers should be empowered to understand scamming and encouraged to contact the service before deciding to transfer their money. Cold callers may move offshore in response to the Government's initiative and become difficult to ban. I support making it an offence to send unsolicited electronic material to persons for the purpose of inducing them to use their pension savings in a certain way. People are already getting unsolicited texts, letters and approaches through social media which will be much more difficult to control.

When the pension freedoms were announced, they were received by many with rapturous acclamation as a reform with no downside. However, the evidence now is that unsupported savers with insufficient financial capability are providing a free lunch for the sharks. The future is a growing defined contribution market and many more savers will be at risk. The noble Baroness, Lady Bakewell, is right in her desire to ban unsolicited communications and the Chancellor is right to acknowledge the scale of savers' vulnerability to scams. I hope the Government's action is rapid and comprehensive because, looking at the evidence from TPAS, every month of delay means another human tragedy as lifetime savings are lost to scammers.

Baroness Altmann: My Lords, I support the amendment in the name of the noble Baroness, Lady Bakewell, and welcome the Government's announcement that they will consult on banning cold calling and look at tightening up the procedures for transfers. Both of those are very important—but so is acting swiftly, as the noble Baroness, Lady Drake, mentioned. The longer we delay, the more people are caught. Banning cold calling will not necessarily stop people's pensions being transferred, but it will send a clear signal to anyone who gets that sort of unsolicited approach that the person approaching them is doing something illegal. That is important, because at the moment people do not know this and we cannot give that message. If we wait until there has been a scam, the money is already lost and we are too late.

The Government must do everything they can to avoid this kind of scamming, which is going on as we speak. I am constantly getting letters and emails from people explaining the way in which they have been scammed. It has come to my attention that an individual who was involved in mortgage scams as long ago as 2002 has set up a new system for scamming pensions. Some parliamentarians seem to have been taken in by this system, which takes people's pension money and invests the proceeds of a defined benefit scheme, which are completely guaranteed, into one unregulated investment promising exceptional returns. I have seen the materials: it is extremely plausible, as is the person responsible. This was the subject of a BBC exposé but seems to have morphed, with the same people, into a new type of scam. As I say, Members of this House and the other place have apparently been caught up in this and look as if they have been endorsing it.

It is important that we do all we can. I completely support the amendments that the noble Baroness has tabled. At some point we might also consider introducing a ban on selling lists of people's details. The Bill should say clearly to the public, "Nobody who approaches you out of the blue about your pension, offering you either a free review or some kind of exciting investment opportunity, is bona fide". We need to be able to give the public that very important message. Currently, we cannot do that. The amendment, if it is agreed, would allow us to do so.

Lord Flight (Con): My Lords, the establishment of an intelligence unit to smell out the operators of scams, track them down and prosecute them before they have a go at robbing people is perhaps almost more important than merely changing the law, which

is welcome in itself but does not necessarily solve the problem. The issue is where such an intelligence unit should be located. Should it be part of the Pensions Regulator, the police or the FCA? Too often regulators are seen as doing nothing until the media or "Panorama" have exposed something, and then they address it, whereas the public expect them to spot the bad eggs and deal with them before they have too much opportunity to rob the public.

Baroness Altmann: My Lords, I will comment briefly on my noble friend's absolutely valid observations. The concerns expressed across the House on this issue are particularly acute as there has been an interdepartmental, cross-government approach to try to clamp down on these issues. Police initiatives such as Action Fraud and Operation Scorpion have all supposedly joined together to fight this issue. The FCA is involved as well. However, in response to Written Questions that I have tabled, my noble friend has said that so far this year, for example, nobody has even been charged and, over the last few years, nobody has been convicted. So this initiative, while very worthy, is not necessarily catching the public's attention. If you ask those who have been scammed where people should go if they are not quite sure about something or have had a problem, they simply do not know. So we either spend a lot more money advertising the existing initiatives or, preferably, ban cold calling and introduce further measures—as the Chancellor has already indicated is the intention—to prevent or make more difficult the transfer of pension money to one of these unregulated vehicles. If we do that, the public will be better protected.

Lord McKenzie of Luton: I will be brief as I do not want to echo the fantastic contributions made by the noble Baroness, Lady Bakewell, my noble friend Lady Drake, the noble Baroness, Lady Altmann, and the noble Lord, Lord Flight. I can see that if an intelligence unit were part of a wider cross-government approach, it could well pay dividends. However, I fear that we would simply replicate arrangements whereby HMRC constantly chases tax avoiders, alights on some and then there is a change, and then somebody draws a line somewhere else and it is a never-ending process. Nevertheless, it may be worth while pursuing that.

The noble Baroness, Lady Bakewell, should be congratulated on bringing forward this amendment, the thrust of which we clearly support—although I disagreed with her on her last amendment. As others have said, events have to a certain extent overtaken it because we heard from the Chancellor last Wednesday the welcome news that the Government will shortly publish a consultation on options to tackle pension scams, including cold calling. It proposes giving firms greater powers to block suspicious transfers and making it harder for scammers to abuse "small self-administered schemes". So this approach appears to take us a little further than the strict terms of the amendment, but if we are to forgo the opportunity to legislate now, at least on cold calling, we need some reassurance from the Minister on how short is "shortly" and what legislative vehicles will give effect to these conclusions.

I do not seek to repeat a number of the awful situations that noble Lords have identified, of people being deprived of their life savings. We have argued before that insufficient groundwork was undertaken by the coalition Government when they introduced these reforms; my noble friend Lady Drake made that point. One omission was clearly to anticipate the opportunities for fraud which these changes attracted. So if the Government are not able to convince us how quickly they can introduce measures to tackle these problems, we will be minded to support the amendment in the name of the noble Baroness, Lady Bakewell, at least as an interim measure.

Lord Freud: This amendment seeks to make it a criminal offence to make a cold call or send other unsolicited electronic mail or communications for the purpose of scamming a pension scheme member of their pension savings or to make changes to their existing arrangements; for example, inducing them to participate in high-risk investments. The noble Baroness, Lady Bakewell, focuses on a substantial issue. The figures are enormous. According to the ONS—the Office for National Statistics—eight scam calls happen every second in the UK, or over 250 million a year. Almost 11 million pensioners are targeted annually by cold callers, and savers have reported losses of nearly £19 million to pensions scams between April 2015 and March 2016. The amendment also stipulates that a person convicted of such an offence is liable to a term of imprisonment not exceeding six months, or a fine, or both, so it aims to deter scammers from such activity.

I state firmly that this is a priority for the Government, and we are determined to tackle the scourge of fraudulent nuisance calls. We want to send a strong message to consumers that they should not respond to such approaches. However, as my noble friends Lady Altmann and Lord Flight and the noble Baroness, Lady Drake, pointed out, that is not enough—banning cold calling alone will not stem the flow of transfers in scam vehicles or the establishment of those vehicles in the first place. Scammers who make cold calls are criminals and will continue to cold call and incite people to part with their savings. It probably does not make a huge amount of difference to the savers whether the criminals are based in this country or elsewhere in the world where we find it difficult to get hold of them.

The Government have explored this issue in detail, which is why in the Autumn Statement last week we announced that we will consult on how best to ban pensions cold calling. That needs to be supported by a wider package of proposed measures intended to tackle pension scams themselves. With regard to timing, on which I have been pushed by the noble Lord, Lord McKenzie, the plan is to publish a consultation on these measures before Christmas and to have the next steps ready for the 2017 Budget—I think it is still called a Budget—which will be in the spring. Comments can then be made on proposals to: ban cold calling in relation to pensions investments, and tackling inducements to do that; placing restrictions on certain types of transfer, which seeks to limit the flow of funds into scams; and making it harder for scammers to set up and run fraudulent small self-administered schemes, which tackles the potential vehicles for scams. We intend to provide more detail on these proposals in the consultation document.

[Lord Freud]

To tackle the scams effectively, it is clearly vital to get this right and to do so in a way that does not impact on legitimate businesses. The consultation will seek to understand what impact these proposals would have on legitimate firms and member transfer activity, and what, if any, legislative solutions might be available and proportionate to disrupt the scams. In answer to the noble Baroness's question, we will also be consulting on appropriate custodial sentences, although imposing them on people in different parts of the world is harder to achieve.

As I said, we need to ensure that we get this right, and the consultation, alongside existing engagement with experts from the pensions industry and consumer groups, will help inform our thinking. With that in mind, I ask the noble Baroness to withdraw the amendment, with which we are entirely in sympathy.

5 pm

Baroness Bakewell of Hardington Mandeville: I thank the noble Lord for his very positive comments and I thank all noble Lords who have taken part in this debate. I welcome the fact that the Government feel that this is an enormous problem that must have top priority. I also welcome the fact that the consultation will start before Christmas. However, I am slightly nervous about that because it is a well-known ploy to start consultations just before Christmas, when people have their minds on things other than consultations, and to finish them in the first or second week of January. Therefore, I would be grateful if the noble Lord could say that there will be a reasonable period over which the consultation will run.

I look forward to hearing in the 2017 Budget the steps that will be taken, and I hope that implementation will follow soon after, because I agree completely with previous speakers that the quicker this matter is sorted, the better. I also welcome that the Government are considering custodial sentences. I agree with and welcome everything that the Minister has said, and I beg leave to withdraw the amendment.

Amendment 79 withdrawn.

Amendment 80

Moved by ***Lord Flight***

80: After Clause 40, insert the following new Clause—

"Automatic transfer of pension benefits, etc

(1) The Secretary of State may make regulations requiring the trustees or managers of a work-based pension scheme ("the transferring scheme") to transfer accrued rights to benefits under the scheme in respect of a relevant member to another work-based pension scheme ("the receiving scheme") in circumstances and subject to conditions which may be prescribed.

(2) Prescribed circumstances for the purposes of subsection (1) may include that—

(a) the relevant member has been an active member of the transferring scheme and has accrued rights to benefits under that scheme;

(b) the relevant member has ceased to be an active member of the transferring scheme;

(c) immediately before the relevant member ceased to be an active member of the transferring scheme the member was a worker of an employer (A) who paid contributions in respect of the member to the transferring scheme;

(d) the whole of the sums or assets representing accrued rights of the relevant member under the transferring scheme are invested in that scheme's default fund;

(e) the relevant member is an active member of the receiving scheme and is a worker of A;

(f) A pays contributions to the receiving scheme in respect of the relevant member;

(g) the whole of the sums or assets representing accrued rights of the relevant member under the receiving scheme are invested in that scheme's default fund;

(h) the relevant member has no accrued rights to benefits under the transferring scheme or the receiving scheme which are not money purchase benefits.

(3) Prescribed conditions for the purposes of subsection (1) may include that the trustees or managers of the receiving scheme have given the trustees or managers of the transferring scheme a transfer notice which meets prescribed requirements.

(4) Regulations may set out further requirements in relation to a transfer under this section, including provisions—

(a) requiring the trustees or managers of the transferring scheme to take such steps as are necessary to comply with the obligation to transfer accrued benefits in respect of a relevant member;

(b) discharging the trustees or managers of the transferring scheme following the transfer pursuant to this section from any obligation to provide benefits to or in respect of the relevant member;

(c) requiring that the relevant member has either consented in accordance with prescribed requirements or has been given the opportunity to opt out of the transfer and has not done so within a prescribed period;

(d) requiring specified information about the transfer to be given to the relevant member;

(e) setting out how the cash equivalent of default fund benefits in respect of a relevant member is to be calculated and verified;

(f) requiring the trustees or managers of the receiving scheme to use the cash equivalent transferred pursuant to this section to provide rights under the scheme for or in respect of the relevant member;

(g) concerning the disclosure of information;

(h) concerning ensuring compliance with any requirements of this section or the regulations;

(i) requiring records of prescribed information in relation to the transfer to be kept and, on request, disclosed to the Pensions Regulator;

(j) imposing or conferring further duties or discretions on the trustees or managers of a transferring scheme or a receiving scheme, on employer A or on any other prescribed person in relation to a transfer pursuant to this section;

(k) overriding provisions of a transferring scheme or a receiving scheme to the extent necessary to comply with any obligation under this section.

(5) In this section—

"active member" has the same meaning as in the Pensions Act 1995 (see section 124(1) of that Act);

"default arrangement" has the same meaning as in the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (see regulation 3 of those Regulations);

"money purchase benefits" has the same meaning as in the Pension Schemes Act 1993 (see section 181(1) of that Act);

"relevant member" means a person whose accrued rights to benefits under a work-based pension scheme may be transferred pursuant to this section;

"work-based pension scheme" has the same meaning as in the Pensions Act 2014 (see paragraph 15 of Schedule 17 to that Act);

"worker" has the same meaning as in the Pensions Act 2008 (see section 88 of that Act).

(6) Regulations under this section are subject to the affirmative resolution procedure."

Lord Flight: My Lords, Amendment 80 proposes a new clause that would enable the trustees of master trusts, or the sponsors or sometimes the managers of group personal pension schemes, to require the transfer of accumulated assets from default funds when moving from one investment manager to another.

The issue here is that at present the agreement of the individual members of the scheme is required, but often deferred members, although advised of the new arrangements, do not have the time to be bothered with them. As a result, small bits of money are left in historic default funds where no one really keeps a watchful eye on them.

It is in the interests of members in default funds to move to the default fund of the new manager when there is a change of manager, so that their funds are kept under surveillance. In addition, quite often the reason for moving to a new investment manager is that the performance of the previous investment manager has been unsatisfactory, so there is at least the possibility that shifting to a new scheme default fund will provide an improvement in performance.

I raised this issue at Second Reading and am interested to know what the Government's attitude towards it is. I am aware of the debates of the past on this subject but, from some direct observation, I suggest that the point is particularly relevant for investments in default funds. Where individuals have chosen their own sub-funds—for example, in a group personal pension scheme or where they are offered under a master trust—they are naturally going to be interested in looking after their own investments. Therefore, in a sense, it is not necessary. But where people have chosen a default fund, I think it makes more sense, both administratively and in terms of the potential returns achieved, if the default funds follow the pension pot.

Baroness Altmann: Might I suggest that my noble friend's amendment is particularly relevant where the master trust has had a triggering event? At the moment, the rules for a bulk transfer of defined contribution benefits do not allow trustees easily to transfer the members' rights across to another scheme. In many cases it may require member consent or complex calculations that are based on defined benefit schemes and not defined contribution schemes. Therefore, I certainly echo the sentiments expressed by my noble friend about the importance of being able easily to transfer accrued rights across from one scheme to another without member consent. As he rightly said, very often members become a little disengaged from their pension pots and may not themselves want to engage in the idea of transferring across. Somebody else being able to do it on their behalf would make sense.

It may also be prudent to consider the notion of bulk transfers, which I did raise on the first day of Committee, even in the circumstances that there has not been a triggering event. That might more easily facilitate the orderly transfer across of members' accrued benefits under a scheme in which it is considered likely or inevitable that a triggering event will occur. The Pensions Regulator may then be able to be proactive rather than reactive in being able to protect members' rights and transfer them across without consent in certain circumstances. I would be grateful to hear my noble friend the Minister's thoughts on that issue.

Baroness Drake: My Lords, as others have referred to, central to the resolution regime for a failing master trust is the transfer of the members and their benefits to another approved master trust. However, for this to be achieved efficiently and promptly, and indeed legally, it would be necessary to undertake a bulk transfer of members and their assets. But as the noble Baroness, Lady Altmann, has detailed, the current rules on bulk transfers would not be fit for purpose for a failing master trust, with its range of different employers and the potential to provide a wide range of benefits and investments to members, who could be either accumulating or accessing their savings. The amendment put forward by the noble Lord, Lord Flight, is an attempt to address that problem and provides a welcome opportunity to address the issues, because they are concerns that are clearly shared by various Members of this House.

The provisions in the Bill and the regulations will need to enable those bulk transfers to take place efficiently and legally. The regulations will need to set out a clear set of rules. Amendment 80 gives the Secretary of State considerable overarching and overriding powers to require the trustees of a failing master trust to transfer accrued benefits. They are extensive powers, but I suspect of an order probably needed to make the transfer regime work in the event of a master trust's failure.

These powers will give the Secretary of State and the regulator the ability to direct where, potentially, many millions of pounds of members' money is transferred to. Had we had draft regulations before us, we might have had many questions. I refer in particular to the House having discussed at length the problems that can occur if the administrative records of the master trust are incomplete or in disarray. Even something simple like the lack of a current address for a member can cause delay if a notification is required, I promise. I have been there and bought the T-shirt. It is a nightmare.

Is it the Government's intention that bulk transfers will be able to take place during a triggering event before all past records are clarified? Post-transfer to the receiving scheme, who will bear responsibility for any administrative errors that existed at the point of transfer? Will there be circumstances where the regulations under this Bill will override other pension regulations in order to effect that bulk transfer? I have one small example. Under auto-enrolment, when members are in self-select funds and are transferred without their

[Baroness Drake]
written consent, they are from then on treated as having been put into a default fund and the charge cap of 0.75% is applied. I do not want to go into too much detail, but that is to illustrate the question of whether there will be circumstances where the regulations under the Bill will override other pension-related regulations. I commend the amendment because it seeks to address an issue that all of us are aware of if the resolution regime will be based on directing the trustees of failing schemes to transfer their members' benefits to other master trusts.

Lord Freud: My Lords, I hope that I do not have the wrong end of the stick with this. As I see it, my noble friend's amendment is effectively about individuals being able to move and consolidate their pots, whereas the regime that we have for master trusts is for bulk transfers.

Lord Flight: To clarify, my amendment is about bulk transfer where the trustees deem it desirable to move from, say, one fund manager to another.

Lord Freud: Does my noble friend mean scheme manager or fund manager?

Lord Flight: Essentially, fund manager, but they may, in the case of a master trust, be the same.

Lord Freud: We have spent a lot of time talking about the continuity options 1 and 2 for trustees in a scheme in difficulty transferring in bulk, and I am sure we will return to those areas on Report. When I read the amendment, I took it to refer to a transfer where a member wants to consolidate his pension fund, which is something that we looked at in the 2014 Bill. I am at something of a loss as to how much I can add to what we discussed earlier, given my misreading of the amendment, which was talking about members wanting to consolidate their pots.

In certain circumstances a scheme may undertake a bulk transfer of members' accrued pension rights without their consent. This could be, for example, because an employer has two or more pension schemes and wants to consolidate them. The provisions in the Bill provide the opportunity to require master trusts to transfer those members. The existing provisions in the Bill will permit a transfer on a trigger event, as my noble friend was asking.

5.15 pm

Baroness Altmann: Perhaps I may follow up that comment. Yes, indeed, there will be transfers on a triggering event, but I seek some reassurance that proper provision will be made for bulk transfers that do not depend on defined benefit rules which make those bulk transfers much more costly and time-consuming and do not automatically ensure that they can occur in a timely way. Does the Minister also consider that there could be circumstances where a bulk transfer could happen without a triggering event? We are trying to consolidate schemes, but we know that there are schemes already in existence that will need to consolidate and either will not or will not wish to meet the authorisation criteria. If there were the possibility of doing so, that would be helpful. Finally, going back to a point that I raised on our previous day in Committee, it is true that the Bill will place what is potentially a legal duty on trustees to effect a transfer, so there will be an obligation for that transfer to happen. But I am not clear that we are any the wiser as to who would be able to fund the transfer if the records of the scheme are in disarray and there are no funds to pay for advice or administration services to enable the transfer to be made. What provisions can we rely on to ensure that the transfer takes place, and of course I am referring again to some kind of potential back-stop insurance as required in case the costs cannot be met anywhere else.

Lord Freud: We are currently considering whether there may be some scope to simplify the current arrangements which will make life easier for defined contribution schemes when making bulk transfers, but we must do that at a time when we do not compromise member protection. As my noble friend will be well aware, there are certain protections in place such as the requirement for an actuary to certify that the members' rights in the receiving scheme are broadly no less favourable than those which are being transferred. When a transfer is made under the mechanisms of this Bill, after a triggering event when the regulator is looking at it, one of the main points is to make sure that there is adequate capital to fund such an event. I will have to come back to my noble friend on how that will work when a bulk transfer is made and the regulator is not involved in the process. What one would normally expect to see is a negotiation with the receiving scheme manager to ensure that it is able to fund the transfer because of the benefits of scale through putting together two systems. I imagine that when the regulator is not involved in the process, that is where the money will come from. I will double-check that and come back to my noble friends, but that is how I foresee it happening.

Lord Flight: I thank the Minister. I will paint a particular picture. Some 95% of group personal pension schemes will typically be in default funds. Where the sponsor and, if it is a master trust, the trustees observe that the fund management performance has been poor, they will often conclude that they want to change. They have an ability to write to all members to advise of this and to advise them to move, but they have no power to require a bulk transfer. In these situations, particularly if there are any deferred members, little bits of money get left behind. The individual almost forgets they have them. They get little or no reporting and they do not get the best out of their pension savings. I observe from within the industry that, particularly for default funds, there is a powerful argument for requiring the new fund manager to require and activate a bulk transfer.

Lord Freud: Now we are moving more closely into what I thought the amendment was about, which is the pot following the member. As my noble friend will know, that mirrors the spirit of Schedule 17 to the Pensions Act 2014. We have not commenced that schedule.

We are looking at another approach, which is the launch of a pensions dashboard. We want to see whether that will work. This would allow people to see

their retirement savings from across the industry in one place, which they could consolidate where they felt it was in their interests. The Government will support industry in designing and delivering a pensions dashboard by 2019, with a prototype being developed by March 2017. Clearly, when we know how it works, it will set the context for looking at how best to worry about the problems of being left either in funds that an individual thought were not performing, or wanting to consolidate. It is not necessarily the case that it is always advantageous to consolidate all the different pots, given the way legislation works—in other words, where the member has valuable benefits or lower scheme charges in one or other of those pots.

There is a lot of development here and a lot of change going on. The pensions industry is absorbing a large number of reforms. The Government's approach is to see how the industry's plan to have the dashboard will allow much greater flexibility for individuals.

Baroness Drake: On rereading the amendment, its first subsection, which states:

"The Secretary of State may make regulations requiring the trustees … to transfer",

is quite open-ended, so people would choose how to interpret it. The point I want to leave with the Minister is that in the particular instance of failing master trusts—I accept that in other circumstances there is a problem with the bulk transfer terms—the resolution regime is to transfer members and their benefits to another master trust. Existing bulk transfer regulations and legal requirements are not fit for purpose. As they stand, they will not permit the Government to achieve the objective of their resolution regime under the Bill. Although I wish the Government well in having an efficient resolution regime, it is important to understand their policy and thinking on how they will amend the bulk transfer regulations and processes to allow these bulk transfers in a failing trust situation to be undertaken both efficiently and legally. Both aspects need clarification. Certainly, if I may presume, the noble Baroness, Lady Altmann, and I are particularly concerned about the Government's proposals for reviewing the bulk transfer arrangements in a failed master trust situation.

Lord Freud: I shall try to wind this up. I accept the implied—or not so implied—concern of noble Lords that making bulk transfers is more difficult than it should be when there is no regulator process. We are now looking at whether we can simplify those arrangements. I am not in a position to say that there is going to be a consultation, or any major process, but we are looking at that. It is not straightforward, as all noble Peers will accept.

I think I have the answer: master trust bulk transfer provisions will trump existing provisions on voluntary transfers. I hope that is a useful clarification for the noble Baroness, Lady Drake. With that explanation, I urge my noble friend to withdraw his amendment.

Lord Flight: My Lords, my objective was to raise the issue of bulk transfers and to understand what government policy is both for master trusts and for other forms of retail pensions. I am particularly pleased to hear that for master trusts, bulk transfers trump voluntary requirements. It is a wider territory than just master trusts, but I beg leave to withdraw my amendment.

Amendment 80 withdrawn.

Amendment 81

Moved by ***Lord Flight***

81: After Clause 40, insert the following new Clause—

"Calculation of pension scheme liabilities

(1) The Companies Act 2006 is amended as follows.

(2) After section 393 (accounts to give a true and fair view) insert—

"393A Calculation of pension scheme liabilities

(1) Regulations may provide that directors, when preparing accounts as required by this Part or deciding for the purposes of this Part whether they are satisfied that accounts give a true and fair view of the assets, liabilities, financial position and profit and loss, may have regard to an alternative method of valuing defined benefit pension liabilities and (except where contrary to international accounting requirements) may disregard any method of valuing such liabilities required by accounting standards.

(2) The Secretary of State must make regulations which set out one or more alternative methods of valuing defined benefit pension liabilities for the purposes of this section.

(3) Regulations made under this section may—

(a) provide for the value of defined benefit pension liabilities to be calculated using a discount rate determined otherwise than by reference to the market yield on government or corporate bonds;

(b) provide for the calculation of the value of defined benefit pension liabilities to be certified out by an actuary appointed by the directors;

(c) make similar provision in relation to limited liability partnerships and any other undertakings subject to the requirements of this Part;

(d) override any provisions which would otherwise require defined benefit pension liabilities to be calculated in accordance with accounting standards;

(e) provide for an audit required pursuant to this Act to be carried out with regard to the provisions of this section.

(4) In this section—

"defined benefit pension liabilities" means liabilities under an occupational pension scheme in relation to future payment of benefits which are not money purchase benefits;

"international accounting requirements" has the meaning prescribed;

"accounting standards" means international accounting standards and any accounting standards issued by the Financial Reporting Council of the United Kingdom or its predecessors or successors;

"money purchase benefits" has the same meaning as in the Pension Schemes Act 1993 (see section 181 of that Act);

"occupational pension scheme" has the same meaning as in the Pension Schemes Act 1993 (see section 1(1) of that Act).

(5) Regulations under this section must be made before the end of the period of one year from the date on which this section comes into force and must be reviewed from time to time.

(6) Regulations under this section are subject to the affirmative resolution procedure.""

Lord Flight: My Lords, the proposed new clause that Amendment 81 would insert raises the other issue I raised at Second Reading, which relates to defined benefit schemes. I raise it because it is of growing economic importance for us to know the extent of real pension fund deficits in this country. Calculated under FRS 17, which now seems to be known as FRS 102, or even IAS 19, this is reputed to be as much as £500 billion. Particularly for large companies, the amount of contributions—top-ups—they are having to make is delaying or postponing investment decisions and, indeed, sometimes affecting their creditworthiness.

When FRS 17 was introduced is was a justified, relatively cautious approach to calculating pension fund deficits. That was before QE, which reduced gilt yields so dramatically, but we have now moved into an age in which it is an inappropriate way to base pension fund deficits. Noble Lords will be aware that the pension fund has its current pot of assets; it is looking at the pension fund liabilities moving forward and discounting those to a present value at the FRS 17 rate.

In my experience, the formula nowadays frequently delivers a rate of interest which is about half the return that the pension schemes have been earning over the past 10 years. That is a more sensible way of getting at an appropriate rate at which to discount the liabilities. In essence, it is intended to suggest that pension fund actuaries should be given the job of determining the appropriate rate at which to discount pension liabilities, having regard both to historic returns and the nature of the investment portfolio.

5.30 pm

There is a caveat in the proposed new clause, which says,

"except where contrary to international accounting requirements".

As I understand it, the US Congress was able to override the accounting requirements but I think we may be tied by EU accounting directive 2013/34/EU. Although we may be freed of this when Brexit comes into effect, it may limit our flexibility here. But at the very least, I can see no reason why we should not require that pension fund liabilities are also shown, calculated at an appropriate rate recommended by pension fund actuaries, so that individuals can understand the likely real level of deficit, calculated on a realistic basis.

As I say, this issue is of growing economic importance. It seems quite extraordinary that huge pension fund deficits continue to be reported and we are aware that the amounts are probably hugely overstated, but we are stuck with being legally obliged to show these deficits when directors are producing companies' accounts. If we are constrained by EU agreement, we should require at the very least that deficits calculated at an appropriate rate of interest are also shown. I beg to move.

Lord McKenzie of Luton: My Lords, the amendment of the noble Lord, Lord Flight, seeks a way of tackling the concern about the calculation of DB pension liabilities and deficits, particularly their volatility and the impact a large deficit can have on a company's balance sheet.

By way of illustration, the LCP annual survey of FTSE 100 company schemes estimated deficits at 31 July 2016 of £46 billion, compared with £25 billion a year earlier and an estimated surplus in February 2016—big swings, clearly. Of course, a significant factor in these calculations is bond yields, which reduced sharply following the EU referendum, pushing up liabilities, although it is suggested that some of this reduction has been negated by interest-rate hedging and that foreign currency-denominated assets have benefited from some decline in sterling.

The reality is that a number of factors feature in how DB schemes should be accounted for: life expectancy, inflation and discount rates, as well as contribution levels and benefits. In seeking to understand the sensitivity of this, for FTSE 100 companies, as reflected on the basis of International Accounting Standard 19, the aggregate pension deficit of £46 billion in July 2016 comprised liabilities of £628 billion and assets of some £582 billion. These are very large aggregates.

The noble Lord's amendment concentrates on the calculation of defined benefit pension liabilities and would enable directors to use an alternative method if,

"they are satisfied that accounts give a true and fair view".

It provides that the Secretary of State must,

"set out one or more alternative methods",

for these purposes—I understand that this is based on actuarial advice—and that an alternative method of valuing DB liabilities must not be,

"contrary to international accounting requirements".

I am grateful to the Institute of Chartered Accountants in England and Wales for the information it provided in helping me to frame this contribution. At present, listed companies have to adopt international accounting standards. In other cases, companies can choose to use IFRS or FRS 102, which replaced FRS 17. However, it is understood that so far as pension scheme liabilities are concerned, the two standards are broadly consistent. The amendment of the noble Lord, Lord Flight, would not appear to apply to listed companies which are bound by international accounting standards—but for how long? He raised that interesting question. FRS 102 sets out how defined benefit plan liabilities are to be measured and recognised. It requires a defined benefit obligation to be calculated on a discounted present-value basis, using a rate of discount by reference to market yields at the reporting date on high-quality corporate bonds. This has to be recognised in full on the balance sheets.

We have sympathy with the amendment to the extent that it seeks to dampen the volatility of the measurement of liabilities for accounting purposes, but not if it is seen as a route to lessen employer contributions to DB schemes. We recognise that the current accounting treatment which generates this volatility is not ideal, although it is not helped by government policies such as quantitative easing. However, we have concerns about this approach. The Financial Reporting Council is responsible for setting UK accounting standards, not the Secretary of State.

A process in which generally applied standards are overridden on particular issues would set a precedent that could lead to a confusing regime and not help

transparency and confidence in financial reporting. It begs the question of what alternative method of valuing DB liabilities would enable directors to be satisfied that the accounts give a true and fair view. What would this mean for trustee scheme valuations? The era of very low interest rates has brought the matter into sharp focus. In winding up our Second Reading, I think the Minister said that the Government had this issue in their sights and would explore it in the upcoming winter Green Paper. We look forward to that but, in the interim, we seek an update on where the thinking is going.

Lord Freud: I thank my noble friend Lord Flight for this amendment, which opens up a fascinating area. Amendment 81 would require the Secretary of State to make regulations which would have the effect of allowing companies to disregard any method of valuing defined benefit pension liabilities required by accounting standards. I recognise and understand the concerns that have been expressed in this debate and during Second Reading about the measurement of the liabilities under accounting standards, particularly when we are in what one would hope is an unusual period of interest rates being low not for reasons of the economy but because of quantitative easing.

Following its recent public consultation on its future agenda, the International Accounting Standards Board concluded that,

"there was no evidence of problems that were sufficiently widespread and significant to require a comprehensive review of IAS 19".

However, I assure my noble friend that this is not the end of the matter. The UK's Financial Reporting Council is in the early stages of considering the impacts of the current approach and will be examining the case for an alternative approach. I believe that this is the most appropriate way forward compared with the approach proposed by this amendment. The independence of the standard-setting approach is widely regarded as one of its strengths. I do not think it would be right for government to intervene directly—here I echo the wise words of the noble Lord, Lord McKenzie. It should not effectively set aside the accounting standards framework that has been developed to deal with these complex matters. If the Financial Reporting Council finds objective evidence or broad stakeholder demand for change, any proposals would need to take fully into account the risks they may pose to members' benefits and would need to be tested through public consultation.

My noble friend talked about the experience in the US. When he did so at Second Reading, he got me to do some work—I always resent that—to look at that. In the US, schemes may move to calculate their funding based on yields from high-quality bonds averaged over the past 25 years. That approach would effectively discount rates by 1% and lead to employers paying significantly less into their pension schemes. What we must not allow to happen—again I echo the noble Lord, Lord McKenzie, and it is not often that that happens—is a change that releases pressure on employers, only to find that that leads to their pension scheme being less well funded and members losing out.

I do not think there is a quick and easy solution here. Nobody who looks into this issue can be in any doubt that this is an extremely complex and technical area. To come up with an alternative accounting methodology would require a number of substantial steps. Those would include: undertaking a detailed analysis of the current commercial, financial and broader economic impacts of the current methodology to determine whether there is a need for that change; developing alternative approaches, which would also have to model transition impacts between the two regimes; seeking views from the market through public consultation on identifying the costs and benefits and any adverse impacts; and, finally, developing the detailed standard itself, which again would require a further round of public consultation.

We are planning to publish a Green Paper over the winter, and I can reassure noble Lords that it will explore the issue of how liabilities are measured and reported in the round. We want to ensure that measures of liabilities and deficits are properly understood and are being used and interpreted appropriately. We will explore and seek views on whether the measures used could, in some cases, be driving investment behaviour that is not in the best interests of members or employers, and we will look at what the alternatives might be. I hope I have reassured my noble friend that his concerns are being addressed and that he will withdraw his amendment.

Lord Flight: My Lords, I thank the Minister for his response. I think that if the Government talked to everyone in the pension fund industry and to many of the large companies in this country, they would all tell a similar story: that the present discounting rate hugely exaggerates the reported scale of deficits. It is an important issue and I wish the Green Paper good luck because, clearly, it is most sensibly dealt with by agreement with the accounting profession. It is not so much about reducing company contributions—there is certainly no scope for that—but it is quite economically damaging if, as now, contributions are required which are way beyond those which are necessary. I beg leave to withdraw the amendment.

Amendment 81 withdrawn.

5.45 pm

Amendment 81A

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

81A: After Clause 40, insert the following new Clause—

"Secondary Annuity Market for pensions savings

The Treasury must, within six months of the day on which this Act comes into force, take steps to—

(a) change the tax treatment in relation to holders of pension scheme annuities wishing to realise the value of their annuities, including by removing the unauthorised payment tax charge; and

(b) put in place arrangements to enable individuals to assign their pension scheme annuity to a third party in return for a lump sum to be taken directly, or transferred to an alternative retirement income product; and

(c) work with the Financial Conduct Authority to ensure appropriate consumer protection is in place for pension scheme annuity holders as they consider their pensions savings options."

Baroness Bakewell of Hardington Mandeville: My Lords, I am conscious that people are waiting for the Urgent Question on Aleppo. However, I feel that this is a really important issue. I am concerned, as are others, that the Government appear to be backtracking on their manifesto promises on the secondary annuity market. As part of the pensions freedoms, the Government planned a secondary annuities market, where original purchasers who had a poor or inferior-quality product would be able to sell it and buy a better one with the cash. This move and this promise were welcome. The Conservative Party manifesto of 2015, on pages 65 and 67, promised:

"We will … give you the freedom to invest and spend your pension however you like … we will allow pensioners to access their pension savings and decide whether or not to take out an annuity, so they can make their own decisions about their money".

The message was clear going into the election: the Conservatives would help those who had poor annuities and allow them to get a better deal for their money.

However, as has been widely publicised, not least in the *Daily Mail* on 16 November, there has been heavy lobbying against this move by the pensions industry, which has claimed it would be hard to set up a secondary market and difficult in terms of consumer protection. This lobbying seems to have come to a head at Gleneagles, when Government Ministers came under heavy fire from insurance company chief executives and gave way under the pressure. The resultant government change of mind has left many people with poor annuities that they now cannot get rid of.

It is all very well for the Government to succumb to the pressures of the insurance industry; I would prefer them to succumb to the pressures of the pensioners who are suffering as a result. The *Daily Mail* highlighted the cases of various pensioners. One 70 year-old veteran who would love to own a second-hand car said:

"Waiting at the bus stop for the hourly service to Nottingham city centre can be a miserable affair—particularly as the winter days draw in".

He,

"must make the lengthy journey from his sheltered housing in the outskirts of the city every time he needs to go to the supermarket or visit friends".

For him,

"and millions of pensioners like him, the Government's promise to let him sell his paltry retirement income for a lump sum offered a vital lifeline. The Army veteran was preparing to exchange his £11-a-week … annuity for a few thousand pounds—enough to buy a small runaround to get to town and back".

But the Government's "dramatic U-turn" scrapped his plans. It means he will have to carry on taking the bus. He said:

"'I was so disappointed when I heard the news … These insurance companies are making so much money from us and their bosses are earning millions. The money from my pension would be a small amount to them, but it would make all the difference to me'. Until the rules were changed in 2014, more than 400,000 savers a year bought annuities when they retired".

Consumer protection can be problematic but it is not rocket science. We are extremely disappointed the Government have reneged on their promise and left people in the lurch. This should be rectified in this pensions Bill and is a big omission.

The original proposal turned pensions savings into income: for example, each £10,000 might give you £500 a year. Plans for a so-called secondary annuities market would have enabled savers to sell these deals. The idea was that insurers would compete to offer lump sums if a pensioner gave up the guaranteed monthly payouts. I have received case studies and lobbying on this issue, some couched in such strong words that I am unable to repeat them in this Chamber, but the Government must be under no illusion that feelings are running extremely high on this issue.

The decision to kill off the secondary annuity market even caught pensions companies off guard. Legal & General, for instance, had invested a considerable amount of resources in a new website, auctionmyannuity.com, so that it could act as a broker when the market launched in April. Obviously it thought the idea was viable and believed there were companies interested in doing it that would have been ready by April.

Legal & General's website would have offered identity checks, risk warnings and advice on how to avoid falling victim to fraud. The former Pensions Minister, the noble Baroness, Lady Altmann, said:

"The Government was being furiously lobbied by the industry in the weeks before they cancelled the market. Protections were in place. Most of the work was already done. Legislation had been laid. If the Government felt that consumers were still not protected enough, it could have delayed the launch, not abandoned it altogether".

However, despite all the groundwork that had taken place, the Government decided to cave in to the lobbying.

I will leave noble Lords with the following case. A pensioner, aged 68,

"receives a £160-a-month annuity from a £52,000 pension pot with Prudential. It took the former roadside equipment installer from High Wycombe, Bucks, 30 years to save the money. He would have never taken the deal three years ago had he realised the Government was preparing to allow savers to take their pensions as cash".

He now fears that his wife, who is 67,

"a local authority worker, will not get a penny, should he pass away suddenly. The small print of the annuity contract states that payments are only guaranteed for ten years after the date",

in 2014 when he signed up.

"Should he die after this date, the remaining cash will go straight into his insurer's pockets".

He says:

"I think it's diabolical that the Government has gone back on its word … I wouldn't blow that money, but I could do something with it, perhaps keep it invested, instead of an insurer taking the lot".

This is a serious issue and I hope the Minister is minded to give at least some comfort to all those affected in their old age. The Government must do something about secondary annuities for all those suffering under the current system. I beg to move.

Baroness Altmann: My Lords, I commend the noble Baroness, Lady Bakewell, on her amendment. I was proud that the Government finally recognised the need to allow people to undo unwanted or unsuitable annuities when that decision was announced and indeed put in the manifesto, which the noble Baroness quoted.

Government rules effectively forced people to buy these products even though they did not want or need them. They had no protection when they were buying but the plans were in place to ensure that they would have protection if they considered reselling them. There was to be mandatory Pension Wise guidance and advice depending on the value of the annuity, and indeed legislation had already been passed to make that happen. As the noble Baroness mentioned, companies have already spent quite significant sums in preparation for this market, which consumers want and in some cases need, as the case studies showed.

In the annuity market it is normal for there to be only a small number of providers, which has never stopped that market operating in the past. For defined benefit pension schemes and bulk annuities, for example, for many years there were only ever two companies that would offer quotes. That should not be a reason to stop people being able to sell their annuity. Indeed, many people with secure defined benefit pensions, and the additional voluntary contributions that they were saving on top of that, were often forced to buy an annuity that they clearly did not need. Very often, because the regulatory system drove people to shop around for the best rate, they did not know that that would not actually necessarily be the right product. If you shopped around for the best rate and bought the single-life annuity, there was no protection for your spouse. In some cases, individuals have bought a product that they do not need and is not suitable for their family circumstances. This measure would have given them an opportunity to undo that. The law currently allows people who have less than £10,000 a year in an annuity to undo it, but if we do not proceed with the plans that were previously in place, they will potentially be doing so without any consumer protection. The plans had been to ensure that there was consumer protection before this happened.

It is not up to the Government or the pensions industry to decide what is best for somebody's money; they are the ones who know that. If they have bought something that is not suitable, it is right that the Government give them an opportunity to undo that deal. If you buy a brand-new car and it is the wrong car for you, you have the opportunity to sell it in the second-hand market—yes, you have to take a discount; yes, it may be a significant discount; but that is your choice. When the Government have enshrined freedom and choice in the pension system, it is appropriate for us to continue to enable people to access their savings, which they need and to which they were promised access. If it requires a delay to get the consumer protection in place, so be it. That is a shame, but it is at least a rationale for asking people to wait longer. To take away the opportunity altogether seems unfair, as the noble Baroness, Lady Bakewell, said. She is receiving representations; I am hearing from large numbers of ordinary people across the country how much it would mean to them to have the opportunity to undo an annuity that they no longer want, or perhaps never even wanted or needed.

Lord McKenzie of Luton: My Lords, we were a little surprised—perhaps we should not have been—to see this amendment seeking the establishment of a secondary annuity market, given the Statement made by the noble Lord, Lord Young of Cookham, just a month ago. I say first to the noble Baronesses, Lady Altmann and Lady Bakewell, that the fact that people may have ended up with an annuity which is not the greatest in the world does not mean that they should compound that problem by doing a bad deal in the secondary annuity market. That is the nub of this issue. You simply cannot equate a transaction on a second-hand car with the sale of an annuity. It is fairly clear what is the market price for a second-hand car; there is a vibrant market out there, as I understand. It is quite different with annuities. That is at the heart of this issue.

An amendment seeking to establish a secondary annuity market was rejected by the noble Lord, Lord Young of Cookham, and we supported him in that. In that Statement, he explained that the Government had consulted extensively with the industry and consumer groups to explore whether conditions for a secondary market in annuities could be established. The conclusion was that, without compromising consumer protection, there were likely to be insufficient purchasers to create a competitive market and that pensioners were likely to incur high costs in seeking to sell. They concluded that the policy would not be taken forward, despite the loss of front-end-loaded tax revenue to the Exchequer. As I said, we supported the Government in that, and we oppose this amendment.

We were sceptical from the outset that this was a sensible policy, and my noble friend Lady Drake and I raised a number of concerns when it first surfaced as part of the Bank of England and Financial Services Act. Indeed, we went on a delegation to see the noble Baroness, Lady Altmann, in her former role. There is of course no pre-existing secondary annuities market to help form a judgment on these matters, but what was proposed was potentially very complicated, with the players including individual annuity holders, potential beneficiaries and dependants, purchasers of rights of an annuity under a specific regulated activity, a further regulated activity for providers buying back annuities, regulated intermediaries, IFAs providing mandatory regulated advice, and authorised entities to check that holders of relevant annuities had received appropriate advice.

No wonder that even the then Pensions Minister, Steve Webb, opined that, for the vast majority of consumers, selling an annuity would not be the best decision. There would be significant costs arising from the necessary regulatory systems. There were further unresolved issues of means-tested benefits and social care and how the income deprivation and capital disregard rules would work in this context. There have been many problems—and, at the end of the day, concerns that there would be insufficient purchasers to make the market work for pensioners. I have not heard any new points raised by the noble Baroness, Lady Altmann, that dislodge this conclusion. Surely there is more for the pensions sector to concentrate on at this time than complicated arrangements that will likely serve only a very few.

6 pm

Lord Young of Cookham: My Lords, as we reach the last amendment in Committee, I point out that the Bill has been in the hands of two distinguished

[Lord Young of Cookham]
psychoanalysts—Freud and his disciple "Jung". Between us, we have tried to look at the disorders in the Bill and prescribe appropriate remedies.

I thank the noble Baroness for raising this important issue. I understand the strong feelings that she expressed when she moved her amendment. In 2015, the Government introduced pension flexibilities, which gave people the freedom to choose how they use their pension savings. Over 300,000 people have chosen to flexibly access over £6 billion since they were introduced, and the Government are committed to keeping these freedoms in place.

In March 2015, the coalition Government announced proposals to remove the current restrictions on assigning existing annuities and to create the conditions for a secondary market to develop. The proposed reforms were in two main areas—removing the unauthorised payment tax that deters people from assigning their annuity, and working with the Financial Conduct Authority to establish a comprehensive consumer protection package. The Government engaged extensively with industry and consumer groups on how they could establish the conditions for an effective market to develop. It would not have been right to introduce measures before understanding the impact that they might have on consumers and ensuring that the necessary conditions for a successful market were in place. In the course of this engagement, it became increasingly clear that creating the conditions to allow a vibrant and competitive market to emerge, with multiple buyers and sellers of annuities, could not be balanced with sufficient consumer protection. I am grateful to the noble Lord, Lord McKenzie, for setting out so clearly the problems that would have ensued had we proceeded.

On 19 October, Simon Kirby, Economic Secretary to the Treasury, made a Statement in the other place about the Government's decision not to take this policy forward, which I repeated for your Lordships on the same day. Our investigations showed that many annuity providers were willing to allow consumers to assign their annuities. Of course, the market for annuities is itself undergoing change following the introduction of the pension freedoms. What became apparent is that, at this time, there would be insufficient purchasers to create a competitive market. Without a competitive market, consumers were likely to get poor value for their annuities and incur high costs for selling.

The Government are committed to the principle of giving people the freedom to make decisions about what to do with their money, which is why we have explored in detail how we could allow this market to emerge and protect consumers at the same time. But what has become clear is that the steps the Government would need to take to create demand in the market would undermine protections and increase the risk for consumers. The noble Lord, Lord McKenzie, cited Steve Webb, the Pensions Minister at the time, who said in the context of this decision:

"There did need to be a lot of potential buyers for this market to work",

and that while the decision is,

"disappointing it is understandable".

Rather than being to the benefit of British pensioners, this market would instead be to their detriment. It would clearly not be in consumers' interests to continue with this policy. Only this afternoon, we have had a number of debates about the importance of protecting consumers, and this would be a step in the opposite direction.

I accept that some people will be disappointed, as the noble Baroness explained, although our analysis indicated that only 5% of annuitants would be interested in taking this option forward. While we accept the disappointment, I hope that noble Lords will agree that it would not be right at this time to allow a market to develop when it is likely to lead to poor consumer outcomes. With this in mind, I ask the noble Baroness to withdraw her amendment.

Baroness Bakewell of Hardington Mandeville: My Lords, I thank the Minister for his response, which I obviously find extremely disappointing. This is a very serious issue. I understand that there were difficulties in producing a competitive market and that the Government support freedom of choice. However, pensioners will not have freedom of choice while they cannot access the secondary annuity market. I thank the noble Lord, Lord McKenzie, and the Minister for mentioning my colleague Steve Webb. His view is that the policy was abandoned because the Government did not put enough weight behind moving it forward. Had they done so, there might have been a different outcome.

At this time, I beg leave to withdraw the amendment but reserve the right to return to it on Report.

Amendment 81A withdrawn.

Clauses 41 and 42 agreed.

Clause 43: Commencement

Amendment 82 not moved.

Clause 43 agreed.

Clause 44 agreed.

House resumed.

Bill reported with amendments.

Aleppo

Statement

6.06 pm

Baroness Goldie (Con): My Lords, with the leave of the House, I shall now repeat as a Statement the response to an Urgent Question given in the other place by my right honourable friend Tobias Ellwood, Parliamentary Under-Secretary of State at the Foreign and Commonwealth Office. The Statement is as follows:

"We are appalled by the entirely preventable humanitarian catastrophe now taking place in eastern Aleppo and across other besieged areas in Syria. The United Nations Under-Secretary General, Stephen O'Brien, has described what is happening in Aleppo as an 'annihilation'. Over the weekend, Syrian regime forces captured several opposition-held districts of

Aleppo, potentially bisecting the besieged eastern part of the city, and there are reports of further advances today.

The regime's two-week assault on Aleppo has been backed predominantly by Iranian and Shia militias. There have been unconfirmed reports of Russian airstrikes, but our understanding is that since airstrikes resumed a fortnight ago, the vast majority have been by the regime. During that time, hundreds have been killed and thousands more have been forced to flee. The last functioning hospital was put out of action on 19 November. Humanitarian access has been deliberately blocked by the regime and its allies for over four months now, leading to the 275,000 civilians in eastern Aleppo facing imminent starvation. Across the rest of Syria, there has been almost no progress in delivering the United Nations humanitarian plan for November. The latest UN plan to deliver humanitarian aid was agreed by the armed opposition groups last week, but the regime is still blocking it. This is just the latest of many failed efforts.

I make it clear to Russia that using food as a weapon of war is a war crime. So, too, is attacking civilian infrastructure, such as hospitals and schools—another favoured tool of the regime and its backers. We call on those with influence on the regime, especially Russia and Iran, to use that influence to end the devastating assault on eastern Aleppo and ensure the United Nations humanitarian plan can be implemented in full. As my right honourable friend the Member for Uxbridge and South Ruislip, the Foreign Secretary, said this morning, that requires an immediate ceasefire and access for impartial humanitarian actors to ensure the protection of vulnerable civilians fleeing the fighting. All involved in the siege and assault on Aleppo have a responsibility to change course to protect civilians.

Addressing the dire situation in eastern Aleppo and the wider Syria conflict is a priority for this Government. I spoke to Britain's ambassador to the United Nations this morning to discuss what more we can do in the Security Council to bring diplomatic pressure to bear on the conflict. There can be no military solution to the conflict. What is needed is for the regime and its backers to return to diplomacy and negotiations on a political settlement, based on transition away from Assad.

The Government stand ready to engage fully in discussions and offer whatever support we can in the quest for a political settlement, working in partnership with the international community, including Russia. We need to maintain international pressure to that end. That is why we were strong supporters of recent EU efforts to extend 28 new sanctions designations against the regime in October and November. In the meantime, we will continue to work with our key partners to look at every option to alleviate the suffering of millions of Syrians, especially those in Aleppo.

For as long as the regime and its backers deny humanitarian access, whether by land or by air, such options are, I am afraid to say, difficult to come by. But by the same token, the real solution is as straightforward as can be: the Syrian regime must simply agree to allow United Nations aid agencies to access those in need. All that is needed is a decision in Damascus, nothing more".

6.11 pm

Lord Collins of Highbury (Lab): My Lords, I thank the noble Baroness the Minister for repeating the Statement. The conditions in eastern Aleppo are simply horrific. Of the 275,000 people trapped there, 100,000 are children, hiding underground in absolutely appalling conditions and facing imminent starvation. There is no doubt that Russia is permitting war crimes. I welcome the unequivocal Statement from Mr Ellwood in the other place that the United Kingdom will do everything possible to ensure that the individuals responsible for these crimes will be held to account in the months and years ahead. Can the noble Baroness outline the steps we are taking to secure the evidence that will ensure a successful prosecution?

However, in terms of the humanitarian crisis that we face, we do not have weeks and months. The situation is absolutely desperate. In June, the then Foreign Secretary, Philip Hammond, said:

> "While air drops are complex, costly and risky, they are now the last resort to relieve human suffering across … besieged areas".

Today, Mr Ellwood said that he would not rule out air drops as a last resort. Surely, from what we have heard described in recent days, we are at that point. The conditions are such that we must be at that point.

The Minister in the other place said that the UK will redouble efforts through all diplomatic means within and outside the United Nations to deliver humanitarian support. What is the noble Baroness's assessment of our ability to build and maintain sufficient support across all our allies to put pressure on Russia and the Assad regime to allow humanitarian aid and access?

In view of the urgency that we face, will she confirm that the Government will bring back to Parliament a formal Statement as a matter of urgency on all the options being considered and on what progress has been made?

Baroness Goldie: I thank the noble Lord opposite for his questions and, indeed, for his sentiments, which I think strike a chord with everyone in the Chamber. I shall deal first with the issue of war crimes, which he raised. Where it is clear that the Assad regime has committed terrible atrocities in Syria, and where there are allegations of war crimes, we are very clear that they should be investigated. We continue to make the case for the situation in Syria to be referred to the International Criminal Court.

On the second issue that the noble Lord raised, regarding the potential option of air drops, we have always been very clear that our priority is the protection of civilians in Syria, who are already facing an appalling humanitarian situation. The noble Lord opposite will understand that air drops are an imperfect humanitarian option by their very nature, and that they can be more dangerous and harder to implement successfully than ground access. So there are major challenges with any military option, including air drops, and we would need to consider these carefully in close consultation with our existing partners, with whom we are working closely. The noble Lord will be aware that the United Kingdom is one of 10 partners, all working together to try to improve the situation in Syria.

[Baroness Goldie]

On the noble Lord's final point, I am sure that my colleagues in the Foreign and Commonwealth Office will have noted his request. I can only reassure him that I will make sure that that request is reaffirmed to the department.

Lord Wallace of Saltaire (LD): My Lords, we on these Benches recognise that what is now happening in Aleppo is only part of a much longer-term humanitarian disaster. Much of urban Syria has been destroyed. I have seen pictures of parts of Damascus I visited some years ago which are now completely uninhabitable. Meanwhile, the battle for Mosul and the battle for Raqqa are beginning, and it is quite possible that during the course of the latter we shall find Turkish forces fighting Kurdish forces over who takes control. How far are the Government working with other international partners to get a long-term approach to the reconstruction of a country which has in a great many ways been destroyed? I gather that today a number of Syrian Christians were here and talked about the extent to which relations between the different communities in Syria have been extremely badly damaged by the fighting, and the Shia militias do not make it easier than it was.

I congratulate the Government on their continued co-operation with the EU on foreign policy matters, and I hope that that will continue for at least another six months or so. I commend the proposals that we should drop aid to affected areas of Aleppo as much as we can. Can the Minister say something about the longer-term issue of the millions of displaced people across Syria and in the surrounding areas who will require active support for a great length of time to come, and what we and others, including other states in the region, are doing to cope with that humanitarian disaster?

Baroness Goldie: I thank the noble Lord, Lord Wallace, for raising two important points. The first is of course that a solution to this problem has to be found within Syria. The United Kingdom Government, in conjunction with the partners to whom I referred, are using every means availableto them to urge both the regime and those who have influence over it, not least Russia, to acknowledge that. The noble Lord will be aware that the High Negotiations Committee has proposed a vision for Syria which the United Kingdom supports, and we very much urge everyone who cares about the country and who wants a future for it to have serious regard to what that committee has outlined.

I remind the noble Lord that the key partners with whom the United Kingdom operates are the United States, France, Germany, Italy, Turkey, Saudi Arabia, Jordan, Qatar and the United Arab Emirates, and that is separate from the global coalition against Daesh, which is another alliance. So a cohort of concerned and influential partners is doing everything it can to try to improve the situation in Syria. However, at the end of the day the solution will have to be found within the country itself.

The noble Lord raises the important issue of the status and situation of refugees—those who have been forced to flee. Of course one can look at the neighbouring countries, not least Jordan, which has been one of the major recipients of refugees and has been providing help on the border. He will also be aware that the United Kingdom is the second biggest bilateral donor of humanitarian aid, and we are desperately trying to do our bit to support these people. However, the future beyond the immediate situation largely depends on finding a solution to Syria.

Lord Cormack (Con): My Lords, I urge my noble friend to seek an early meeting with the patriarch of the Syrian Orthodox Church, whom a number of us had the pleasure of meeting this afternoon. He would paint a rather different picture. There is a blot on our foreign policy here, and I urge my noble friend to seek that meeting and to listen very carefully.

Baroness Goldie: I am very grateful to my noble friend Lord Cormack for his contribution. Unfortunately, I was unable to attend that meeting. I am sure that such a meeting would be of interest, and I would very much hope that the Church would feel able to share with the Government any thoughts that it has. We will all be aware that we are doing what we can to try to assist but, as I said earlier to the noble Lord, Lord Wallace of Saltaire, short of intervening, there is a limit to what we can do in supporting, advising and trying to influence. We are working as part of a partnership.

Baroness Cox (CB): My Lords, is the Minister aware that the Islamist military is occupying eastern Aleppo, having inflicted sustained military offences against the civilians of western Aleppo, including using cluster bombs and gas warfare? Is she also aware that the Syrian army is helping 1,500 civilians to flee the fighting in eastern Aleppo, although the Islamist terrorists in control there are trying to stop them leaving, using them as human shields? Everyone whom we met in Aleppo is deeply worried by the West's commitment to regime change, which would give power to such Islamists, creating a situation similar to that in Iraq and Libya. Is there any chance that Her Majesty's Government would listen to the people of Syria and reconsider their policy of inflicted regime change?

Baroness Goldie: I thank the noble Baroness for her contribution. She will understand that the United Kingdom Government, in conjunction with other powers, are doing what they can in a very difficult situation created by others, who bear a primary and singular responsibility for the appalling situation to which she refers and the appalling suffering that is taking place in Aleppo. We are very clear that the only thing that will change this and offer any hope of improvement is a recognition by the regime that humanitarian help must be allowed into Syria and Aleppo. We are also very clear that the future depends on regime change.

Health: Parity of Esteem

Question for Short Debate

6.22 pm

Asked by ***Lord Alderdice***

To ask Her Majesty's Government what plans they have to ensure parity of esteem between mental and physical health.

Lord Alderdice (LD): My Lords, first, I thank all noble Lords who have indicated their wish to speak in this debate. They are all Members of your Lordships' House who have a considerable interest in this area. Perhaps I may mention in particular the noble Baroness, Lady Hollins, who, as a colleague in the Royal College of Psychiatrists, was probably more responsible than anyone for including the notion of parity of esteem in the Health and Social Care Act 2012. That is one reason that we are debating this Question this evening.

I also wish to mention the noble Lord, Lord Lansley, who was of course Health Secretary. He recently put his name to a letter, along with every other Health Secretary in this country over the last 20 years and a number of other senior concerned people, to talk about how the failure to provide appropriately and fully for mental health is a stain on our nation. I look forward to the debate because I think that it provides another opportunity for us to keep this important matter to the fore—not just mental health but the question of how we address these issues.

I should start by declaring two interests. First, I am a fellow of the Royal College of Psychiatrists and a clinical professor at the University of Maryland in the United States. Secondly, I was one of the people who negotiated the Belfast agreement. The first of those may seem fairly obvious and the second a little more opaque, but the reason for mentioning it is that the notion of parity of esteem was central to the Belfast agreement, long before it was discussed in terms of mental and physical health.

It is important because there were two approaches to the notion of parity of esteem there. The first was that parity of esteem really meant equality of treatment between Protestants and Catholics—between unionists and nationalists. The other, to which I adhere, was that parity of esteem was about an approach to all the people in the community. It was not about a dividing up into one side and the other and a balancing up, but about parity of esteem for all elements of the community—those who came originally from Ireland, those who came in later and those who have come more recently. Parity was not a question of one side and the other.

That is relevant to this debate because it seems to me that there is a danger that we see addressing these issues as a balancing-up of the funding, structures and championing of mental health against those of physical health. There is no doubt that there is certainly a case for that, and I have no doubt that other noble Lords will speak to the facts and figures and explain that mental health has always—certainly in living memory—been the Cinderella of health and social care, and how despite commitments in law and political policy, there is not much evidence that the situation is dramatically improving. That being the case, of course it is appropriate for us to press for things to improve, and to try to ensure that funding and structures do not disadvantage the care of the mentally ill. However, at the same time, we need to ask ourselves some questions. I would argue that instead of repeatedly returning to the issue of changing structures—and the Health and Social Care Act became much more famous for changing structures than it did for the inclusion of the notion of parity of esteem—engineering the cultural change emblemised by the notion of parity of esteem could fundamentally be much more important. That is what I wish to address, and other noble Lords will pick up on the other issues.

When Thomas Jefferson penned the American constitution, he described the inalienable rights as life, liberty and the pursuit of happiness. If any politician nowadays was to propose the pursuit of happiness or a ministry of happiness, they would probably be made fun of. That is partly because words change their significance and meaning, and the words of the 18th century do not necessarily fit with the language of today. Rather than "the pursuit of happiness", the language that we might use is "the development of mental, physical and social well-being for our people".

The notion that the pursuit of happiness, or of mental, physical and social well-being, might be a new ambition for health was picked up by the former Minister of State Paul Burstow, my friend and colleague, in a CentreForum panel and publication, which the noble Lord, Lord Adebowale, also participated in. It said that the future perhaps is not in creating structures in which mental health gets a fair crack of the whip or slice of the cake, even though that is extremely important, but rather that we try to look at addressing the well-being of individuals and communities in our country. In truth, no matter how much we deal with physical health problems, if people do not feel a sense of well-being, no amount of physical health will make life worth while.

I remember as a very young psychiatrist in Northern Ireland trying to get across on the radio and television issues about depression and bereavement and so on. I was joined by a very senior emeritus professor of surgery, Professor Rogers. I thought, "Oh my goodness, this is extremely intimidating; what is he going to say?". I made my little presentation and he said, "I want people to listen to this because in a lifetime of working in surgery, with all the horrible diseases and disorders that people have, I have seen very few of them who actually wanted to take their own life. It is a measure of the deeper distress of many people when they are mentally ill that they sometimes feel a need to put an end to their life and their misery". I have never forgotten that. We all try to promote our own causes, and yet here he was saying, "Yes, I did all sorts of work; but fundamentally, if people get to the point where life is not worth living and they take their own life, it is an incredible marker".

In 2010, I did a report for the Royal College of Psychiatrists on self-harm and suicide. We marked out a number of things that needed to be done to address the increasing level of suicide. It is not getting better. Arguments might be made about facts and figures, percentages of money, numbers of people being seen, numbers of out-patient appointments and access to services. All of those are relevant and necessary for those who are trying to commission and provide services. But if we all know in our hearts that people who contemplate taking their lives have obviously reached a point that nobody should find themselves reaching—there has certainly been inadequate help and support—that marker tells us that something important has failed in addressing the well-being of our people.

[Lord Alderdice]

This is also not really a party-political thing, because it has always been a matter of concern on all sides of the House. The noble Lord, Lord Prior, wrote me a note to apologise for not being able to be here for the debate, but he knew that he would be well represented. He said that this was a matter of great importance. Let us not treat it as a question of party politics. Let us try to understand what we need to do to make a real change. In the CentreForum document and the recent report by the King's Fund and others, there has increasingly been an appreciation that we need not just to build on the pillars of individual kinds of illness and care but to find a way of bringing them together.

At home in Northern Ireland, we ended up with an integrated health and social care system. That was the one that I worked in all my life. The political problems meant that social care and health care—mental and physical—were all taken together and were able to be dealt with without arguing about budgets, where services were or any of those kinds of things. It helped. There is no doubt that it helped. However, it is not just about an integration of structures. It is also about a cultural change that helps us understand that mental health is not about one bit of us, physical health about another bit of us and social well-being and our relationships about yet another bit of us. We cannot be divided up in that way in any helpful fashion. It is about dealing with each other as human beings—all of us, the whole package of being a human being.

One of the tragic and disastrous consequences of what is happening in politics now globally is that people are not treating others as human beings. We can do all sorts of horrible things to people when we do not treat them as human beings. We need to think about things in terms of mental and physical health care. Of course we need to have specialists to focus on this particular aspect of the problem or that particular disorder, but there is no part of our physical care that does not have a mental and emotional component to it. There is no part of our mental life that is not related to our body. There is no part of our existence that is not about relationships with other people.

My question for the Minister is not just about what is being done to promote parity of esteem in terms of funding and making sure that it is fair funding. I am not arguing about the equality, but is it fair or is it not? Is it becoming less fair and if so can we do something about it? Yes, of course there are issues about structures and questions of commissioning, but are there things that we can do to change the culture and approach that ensures that we are dealing with the well-being of the people who live in our communities and of the communities themselves? That kind of cultural change is necessary if we are to achieve what we want to achieve in terms of parity of esteem for these different components of ourselves and our fellow human beings. I am keen to know what the Government feel able to do to promote that.

6.33 pm

Lord Lansley (Con): My Lords, I congratulate the noble Lord, Lord Alderdice, on securing this short debate and on the way he introduced it. He set a very helpful frame for it. It is fundamentally not just about funding and structures, but about culture and attitudes. That is what we are aiming for, although I confess that, not for the first time, I will need to talk about funding and structures as well. Perhaps they are entirely complementary.

The noble Lord was kind enough to refer to back to 2011 and the inclusion in the Health and Social Care Act of language intended to demonstrate the commitment to providing health care services to tackle both physical and mental illness. Of course, it was not the first time that public policy had set that objective. It was simply intended to reinforce the February 2011 strategy document, *No Health Without Mental Health*, published by myself and Paul Burstow, who, as the noble Lord Alderdice, has just said, has been his colleague and was mine at the time. I pay tribute to his work on the document and indeed on the Care Act 2014 which was passed subsequently.

The point about *No Health Without Mental Health* is precisely the point made by the noble Lord in his introduction to this debate: we completely mislead ourselves if we see physical health and mental health as occupying in any sense different places for us as individuals and us as a society. We cannot have one without the other. In truth, I suspect that if we want to make the greatest possible progress in improving the health of the nation overall, it is in improving mental health that we can secure the best potential return. For young people suffering from serious mental health problems, the impact on their lifetime health and life chances is dramatic. The premature mortality of those with severe mental illnesses is clear, and this is probably the group in society on whom we could make the greatest impact if we could reach out and treat them successfully at an earlier stage. People are not dying because of their mental illnesses; they are dying because of the range of physical illnesses and lack of physical health which are the concomitants of their severe mental illness.

That is why *No Health Without Mental Health* was the title chosen for the document. Because of that thought, the strategy set itself the objective of trying, as we put it, to "mainstream" mental health into the NHS. It is a fact of NHS life since its establishment in the 1940s that mental health has always been regarded as something separate and different, but frankly it is not. It is a single part of the picture of how we deliver NHS services. Our objective, as part of the structural process, was to try to engineer mental health services into the mainstream provision of NHS services. However, we are still a long way from that. Mental health is not treated in the same way as other services. But we put that into public policy in February 2011, when we said:

> "We are clear that we expect parity of esteem between mental and physical health services".

It was a cross-cutting strategy that was intended to deliver that parity.

As the noble Lord pointed out, why do I and all other former Secretaries of State going back 20 years feel a sense of distress and sometimes despair about our ability to produce precisely that result? I think the answer is that the structures, funding and culture have not yet accepted that mental services should be brought

into the mainstream, with all the benefits that that would bring. In my experience as a Secretary of State, mental health trusts were often extremely well run organisations, even by comparison with other community healthcare services. That is why I was so disappointed that the Uniting Care Partnership contract for Cambridgeshire and Peterborough, which faced severe problems from the outset and then collapsed, did not bring acute community and mental health services into one organisation, which would have been really useful.

We all support and want integration of services, but it is not happening in many places, and even where people put the services under a single umbrella, they often do not achieve integration of the professions. Least of all do they provide the integration that should be at the heart of the patient experience, so that people feel that health services are being provided by an organisation that works around them, not to its own structures and definitions. We have a long way to go to make that happen. Another real concern is that we have failed to achieve integration, notwithstanding successive requirements in recent years from government and NHS England for commissioners to increase funding for mental health services at least as fast as for the service overall.

I have to say that, although there were some announcements in September by NHS England and NHS Improvement, the structure of funding to the National Health Service from commissioners plays a part. Most of the time, most of the NHS is funded on the basis of tariff. To that extent, in so far as somebody receives a service from a provider, the provider has recourse—sometimes not enough, they think—to the commissioners to provide for that activity. Mental health trusts are pretty much still all under block contracts. As I said, an effort has been made since September to extend tariffs into mental health services. It should be done on the basis not of episodes of care, but of bundled care and care pathways. When that happens, it will enable mental health trusts to escape from this situation: because commissioners know they have to pay for the tariffs, such trusts are often provided with the residual sum, which means they do not get the funding they could for the activity they undertake.

My colleagues and I could see some of the problems: the number of suicides among young men aged under 45; people having to travel great distances to access care; and rising levels of mental health problems among young women. These and other issues are presenting us with problems. We know we can change the culture. Time to Change, for example, was a very successful programme that continues to be extremely useful, and we now have access standards for mental health services. However, I ask the Minister to take back these questions. How much progress has been made so far in 2016-17 in securing those access standards? How much further do we have to travel? When will we be told what the objectives will be in 2017-18 and 2018-19 for measuring progress towards the 2020 objectives in the mandate for securing access to mental health services?

There is more we can do. We can extend the access standards. We need more quality standards applicable to mental health—the forward programme has only one, although the number published by NICE is valuable. It feels to me and my colleagues that we have much further to go and we need to inject a sense of urgency. That is why I welcome the debate.

6.42 pm

Lord Oates (LD): My Lords, I am grateful to my noble friend Lord Alderdice for initiating the debate. It is obvious that no one on the Government Benches or on this side of the House will argue that there should not be parity between physical and mental health. As my noble friend said, that commitment was put in legislation by this House in 2012. It is enshrined in the NHS mandate and on the lips of politicians of almost every political hue. But it is one thing to will the ends and quite another to will the means. Despite so much debate and so much agreement, we are still a very long way from providing the means to achieve the end we all purport to support.

Of course, it is naive to think that parity of esteem between mental and physical health can be achieved overnight. I am the first to recognise, as my noble friend and the noble Lord, Lord Lansley, made clear, that money alone is not in itself an answer. There are complex issues related to culture, staffing, training, and effective data and reporting systems. Change is needed not just in our health services but in our education services and in the services provided by a wide range of authorities. It is true that money alone will not change things, but it is also true that without the requisite funds, none of the other things that need to happen can or will happen—and all the time they do not, thousands of lives will continue to be lost and millions more will remain hobbled by mental ill health.

It may be that we cannot achieve parity of esteem overnight, but that is no excuse for complacency. Let us never kid ourselves that we have the luxury of time, because every month we delay, every service we fail to provide and every person we fail to treat adequately has an impact that can last a lifetime. So whatever the response from the Minister this evening, I hope it will recognise the desperate, life-threatening urgency of what we are discussing today.

The Mental Health Taskforce's five-year forward view reported that suicide deaths are rising after many years of decline: 4,882 deaths by suicide were reported in 2014. That is nearly 2,000 more people than were killed in the horrific attacks on America on 9/11—and it is not a one-off event. It is a death toll happening year after year, a tragic waste of the lives of so many precious people and a terrible toll of grief on so many families and friends. Such is the scale of this tragedy that suicide is now the leading cause of death for men aged 15 to 49. The five-year forward view reports that in recent years the rise in suicides among middle-aged men has been particularly acute.

Those who listened to Radio 5 Live's "Five Live Investigates" programme on eating disorders yesterday morning will also have heard of the terrible inadequacy of treatment in many areas of the country for those suffering from such disorders. They will have heard of the parents in Oxfordshire forced to make an 800-mile round trip to visit their daughter who could be provided with the care she needed only in Glasgow. That is the level of inadequacy we are dealing with. Those of

[Lord Oates]

us—and there are many, I know—who have people dear to them who have suffered from such disorders will know the absolute desperation of parents, family and friends when you cannot get the access to services that are so desperately needed. Those listening to that Radio 5 Live programme will also have heard the research carried out by the programme that indicated that there had been a 65% increase in deaths from eating disorders since 2014.

Of course, it is not just the young and middle aged who are suffering from mental ill health. Older people are, too, particularly those in care homes, 40% of whom are affected by depression. We all know how very far we are from achieving parity of esteem and we need to be very clear with ourselves about the very real and often irreversible impacts on people's lives that our failure represents. Of course, we should not ignore the very important steps forward in recent years in tackling the stigma of mental ill health and in putting parity of esteem firmly on the agenda. I pay tribute to the many people, of all parties and none, who have made such efforts in that regard, not least the noble Lord, Lord Lansley, who mentioned Paul Burstow and Norman Lamb and other Ministers, including Ministers of other parties, who have shown great commitment to this issue.

Like my noble friend, I wonder how much progress we are actually making. The introduction of waiting time standards and the injection of new resources has been welcome, but there are very worrying signs that the extra money is not getting to the front line. The briefing we have received from the King's Fund shows that 40% of mental health trusts continue to experience year-on-year cuts to their budgets as the demand for their services increases. With 80% of mental health care provided through the trusts, it is hard to see how we will reach parity of esteem with this approach. It is equally hard to understand how we will deliver the quality and choice of provision that are needed.

The British Association for Counselling & Psychotherapy report, *Psychological Therapies and Parity of Esteem*, cited NICE research that, of all those receiving treatment in the NHS for common mental health disorders, only one in seven receives psychological therapy; the majority are prescribed medication, despite the fact that most patients say they would prefer talking therapy; and there is no requirement on commissioners or providers to deliver the full range of NICE-recommended therapies. Only one in five service users who responded to the BACP survey had been offered a choice of therapy. As Paul Burstow said when Minister for Care Services in 2010:

> "At the moment, IAPT is a little too much like Henry Ford's business philosophy … you can have any therapy as long as it's CBT".

Both my noble friend Lord Alderdice and the noble Lord, Lord Lansley, have been clear that we need to look beyond funding and structures to cultural and societal issues. I agree wholeheartedly with the noble Lord, Lord Lansley, that mental and physical health should not be seen as separate things. Nevertheless, we cannot ignore the resourcing issues, so perhaps the Minister might address a couple of questions. First, what are the Government doing to ensure that funding actually gets to the front line? Secondly, what measures are they taking to ensure that we have effective data on what is actually happening in the NHS with regard to mental health? Thirdly, what are the Government doing to ensure that the range of IAPT therapies are available across the country?

Dr Michael Shooter said in his introduction to the BACP report:

> "You will not meet your commitment to parity of esteem for mental health without a significant increase in the quantity and quality of the provision of psychological therapies. If you are serious, this is what you must do".

I hope that we are serious and that the Minister will tell us that that is what the Government will do.

6.51 pm

Baroness Hollins (CB): My Lords, I, too, thank the noble Lord, Lord Alderdice, for introducing the concept of parity in such an interesting way. I admit to being delighted that my amendment to the Health and Social Care Act has contributed to moving mental health issues up the political agenda, with a commitment to parity of esteem. I declare an interest as a former president of the Royal College of Psychiatrists, a former consultant psychiatrist and emeritus professor of psychiatry at St George's, University of London. I also steered the development of the British Medical Association report published in 2014, *Recognising the Importance of Physical Health in Mental Health and Intellectual Disability: Achieving Parity of Outcomes*, and I will return to that in a moment.

Parity also means that if a diagnosis of a mental health problem has been made, investigations and treatment should be provided on an equal basis, as they would for a physical health problem. But we know that this is not happening yet, and one reason for this is because evidence-based tests and treatments for mental disorders lag behind those for conditions seen as purely physical. There has been an unacceptable underresourcing of research into the understanding and treatment of mental illness, and this is really important.

Another aspect is the physical health of people with severe mental illness, who face earlier death than people without. As with people with learning disabilities who experience earlier mortality, discriminatory attitudes are probably partly responsible. In July this year, the United Nations Human Rights Council adopted a resolution on mental health and human rights, which highlighted that,

> "persons with mental health conditions or psychosocial disabilities, in particular persons using mental health services, may be subject to … widespread discrimination, stigma, prejudice, violence, social exclusion and segregation, unlawful or arbitrary institutionalization, over-medicalization and treatment practices that fail to respect their autonomy, will and preferences".

I think this is relevant to tonight's debate.

I have long been an advocate of liaison psychiatry teams in acute hospitals. The announcement by Simon Stevens of a new standard for mental health care is to be welcomed. It says that,

> "anyone who walks through the front door of A&E or is on a hospital ward in a mental health crisis should be seen by a specialist mental health professional within an hour of being referred".

This includes mothers in maternity wards. We should not underestimate how hard this will be to achieve, because it will require not only a change of attitude among health professionals and a change in the culture of hospitals but a completely different way of commissioning and providing mental health services. The standard demands that patients should,

"within four hours … have been properly assessed in a skilled and compassionate way, with the correct next steps for their care planned in partnership with them"—

and, I hope, with their family or partner when relevant.

For me, two very important words in this announcement bear careful thinking about. One of these is "compassionate". We have spoken about compassion many times in this House in connection with the report of the Francis inquiry but not in connection with parity of esteem. In the department of psychiatry at Harvard Medical School, the idea of Schwartz rounds developed—and these are now being used in some hospitals in the United Kingdom—to provide an opportunity for staff from all disciplines to reflect on the emotional aspects of their work. I suggest that this type of approach is fundamental to breaking down the barriers to the acceptance and understanding of mental distress in our hospitals. In part, their success is because they are looking after the very staff who are working in an environment where mental distress is perhaps not understood, whether it relates to the patient or to the staff themselves. Another initiative that the department at Harvard is researching is whether empathy can be taught to clinicians, with a particular focus on non-verbal aspects of communication.

The second key word in the announcement is "biopsychosocial", and all three parts of that word must be addressed. A key point about parity, which has already been mentioned in this debate, is that we cannot and must not think about mental and physical illness separately any longer. My main concern about our failure to achieve parity is that we are still separating the mental and physical parts of ourselves in such an unhelpful and inaccurate way. It is almost as if our hearts and our minds are in different bodies, and that the social context in which we live our lives is of no importance.

In current discourse, physical illnesses are seen as biological in nature and in need of biomedical tests and interventions, while mental illnesses draw on neuroscience explanations as well as social and psychological ones. In reality, both mental and physical disorders need to draw on biopsychosocial formulations and responses. The problem arises when medical practitioners fail to make the connections. In many ways, this is not surprising given the current separation of services between different provider organisations and the too-early separation of clinical training into physical or mental. Yet we know that people with mental ill-health are three times more likely to end up in A&E than the general population, and five times more likely to be admitted to general hospital wards in an emergency. Is any more evidence needed for the provision of skilled mental health practitioners to be present in the acute hospital, on an equal footing with other specialists?

The NHS has published an aide-memoire on what every sustainability and transformation plan needs to consider in relation to mental health and dementia. The Royal College of Psychiatrists believes this aide-memoire to be a very important guide. Can the Minister say what the Department of Health has done to promote this document and to ensure that local areas take the advice,

"to think more holistically across mental and physical health, rather than just",

in terms of a separate "mental health 'section'"?

Does the Minister also agree that the Government have a duty to address the urgency of the fact that 46% of people with serious mental illness have a long-term physical health condition and are at risk of losing, on average, 10 to 20 years of their lifespan due to physical ill-health? Will the Minister explain how in practice the Government's policy is expected to have an impact on reducing premature mortality? Will the Minister also tell the House what measures are being taken to increase the essential research funding which will underpin any chance of success in this policy initiative?

Will the Government commit not to sign off any sustainability and transformation plan that does not have a clear plan for improving services for children's mental health? I have not spoken specifically about children or about people with learning disabilities or autism, who have a much higher prevalence of mental illness.

My final comment relates to the urgent need for more attention and money to be given to creating safe and supportive environments and providing skilled support at home for all people with mental health problems and to take seriously the psychosocial part of the word "biopsychosocial".

7 pm

Baroness Redfern (Con): My Lords, I, too, welcome the opportunity to take part tonight. I refer noble Lords to my interest as leader of North Lincolnshire Council, which is set out in the register. I thank the noble Lord, Lord Alderdice, for tabling this Question. We all want to highlight the importance of the very real issue of parity between mental and physical health. Unfortunately, in the past mental illness has been classed as a Cinderella service which has been underfunded and not meaningfully discussed for decades, so I welcome the Government's intervention with an additional £1 billion per year in real terms by 2021. I fervently hope to see a more collaborative approach to parity of mental and physical health.

I was personally involved as a guardian to a young person who suffered from schizophrenia. I tried to support him to live independently in his community. Sadly, he died prematurely. A concern was how people related to him. It was at many times challenging for him, and for others. People's fixed views were not always encouraging. Access to services could be difficult at times. Barriers are beginning to be dismantled, particularly the general public's attitude. Overcoming stigma and discrimination is supporting this approach. Celebrities, politicians, sports stars and a whole army of campaigners and activists are now speaking openly and calling for better treatment, culminating in a desire massively to improve this service.

[Baroness Redfern]

We have one life, so when we read statistics showing that people who suffer severe mental illness die on average 15 to 20 years earlier than the general population because of poor physical health, quite rightly there should be a call to do something—a call to action. We need a first-class delivery vehicle equipping, upskilling and increasing our mental health workforce. It is critical that we get it right in terms of numbers, skill mix and appropriate training to see service improvement and to support those professions. It is also important to have written care plans assessed annually with input from carers and supporting organisations. Care plans should include priorities of public health and concerns such as tobacco, alcohol and obesity. We know that poor mental health is associated with higher rates of smoking and, in particular, with substance misuse problems.

I particularly highlight prisoners in our criminal justice system. After they have entered prison, large numbers of men and women are diagnosed with a diagnosable mental health problem. From the viewpoint of those facing long sentences, their life has fallen apart. When those men and women leave the criminal justice system a direct referral to the NHS would help and should be offered. Not everyone leaving prison will choose that option, because of their distrust of professionals; nevertheless, the opportunity should be available. Bridging the gap at that point would allow other organisations, including local government, to take part as part of a prevention agenda, in particular helping with housing and signposting other services. As we know, good-quality housing is important to give not just comfort but stability and focus for people suffering from mental health issues.

I mentioned stability, and a place. We all need a place—a home to connect to a community—to belong to a community, which can contribute to a person's well-being. There is also a need for a really good work programme, which will forge and enhance esteem. Mental health problems are one of the most significant barriers preventing people on benefits from taking up employment, so there is a need to look at how the benefits system supports them and to focus more on improving mental health—a new, integrated approach between work and health. As we all know, it is okay getting that job, but this is about keeping it, because we know it benefits people's health and mental health. Building relationships and making new friends offers an opportunity to address loneliness and could help bring down those high rates of suicide, which remains the biggest killer of men under 45. All this comes into the equation for a better life chance for people suffering from some form of mental illness.

In the time allocated, I have focused on a particular age group and section of our population, but with mental health issues affecting all ages, from our younger generation to our older generation, we need to make a real difference and really push this. I hope that with the Government's budget increase we will see a difference. I see a change happening and, building on that premise, we can pledge our support for more prevention. With this timely debate tonight, we are responding to and highlighting the very real and personal issues affecting mental illness and offering support for parity of esteem for mental and physical health for all. I very much welcome this debate tonight.

7.07 pm

Lord Cotter (LD): My Lords, this subject has been raised before, and I thank my noble friend Lord Alderdice for raising it once again. It is a crucial matter that has to be examined frequently—or, shall I say, continuously. We are living through a period when, time and again, there is concern about the funding of the NHS as a whole. Is it adequate or not? We need to be very concerned about parity between mental and physical health.

Mental health issues are not always taken seriously because, unlike physical conditions, they cannot always be seen, and it is only in recent years that the extent of the problem has become a national issue. One in 10 of five to 16 year-olds has a diagnosable mental health problem. It is also the greatest reason for death in young men, as has been mentioned. A mental health problem can start early and be a lifetime issue.

I will address one specific area of mental health, CAMHS, which stands for child and adolescent mental health services. I understand that every town or area in the country has a CAMHS team, and the concern is whether funding intended specifically for the CAMHS team is always being kept for that team. Can the Minister look into this? There is concern that CAMHS funding specifically intended for that role has been used to plug problems in local areas with local hospitals and suchlike. Is CAMHS funding, which is so important to address this issue, always being ring-fenced?

I want to repeat concerns that were raised earlier this year when *The Five-Year Forward View for Mental Health* was published by the Mental Health Taskforce. I draw this independent report again to the Minister's attention. Its foreword says:

> "For far too long, people of all ages with mental health problems have been stigmatised and marginalised, all too often experiencing an NHS that treats their minds and bodies separately. Mental health services have been underfunded for decades, and too many people have received no help at all, leading to hundreds of thousands of … tragic and unnecessary deaths".

I urge the Government to look at that report again and be aware of the need to address the whole issue of mental health.

Previously in debate, a government Minister said that he agreed that the Government and Ministers needed to be held to account once or twice a year. I am glad to have taken part in this very necessary debate to hold the Government frequently to account. On that note, and with my concern about local funding for the help that is needed for children and young people, I urge the Minister, as we all do, to look into these problems.

7.12 pm

Baroness Tyler of Enfield (LD): My Lords, I congratulate my noble friend Lord Alderdice on securing tonight's debate, which provides a timely opportunity to consider one of the most fundamental issues in healthcare today. Efforts to achieve equal value of physical and mental health span many decades. The

Royal Commission of 1957, the year of my birth, noted, not quite in today's language, that:

"Most people are coming to regard mental illness and disability in much the same way as physical illness and disability".

That was almost 60 years ago.

In recent times there has been a welcome shift in public attitudes towards mental health and a growing commitment among communities, workplaces and schools, and within government, to change the way we think about this issue. As we know, there have been a raft of commissions and taskforces as well as *Future in Mind*, looking at young people's mental health, and of course the recent *Five-Year Forward View for Mental Health*. They have provided many important recommendations on how we can achieve genuine parity of esteem. They have all stressed, as has been stressed tonight, the inextricable link between mental and physical health. What does that actually mean? To help define this, I looked back at the All-Party Parliamentary Group's very good report last year on parity of esteem. It said:

"What this would mean in practice is that taking a holistic view of an individual's health (seeing the interdependencies between both their physical and mental health needs) would be the norm".

Having listened carefully to my noble friend Lord Alderdice, I would add "health and well-being".

The fundamental question for us is why it has been so difficult to achieve real and sustained progress. I did a quick survey of the scene, and many aspects I did not find very reassuring. As Michael Marmot so powerfully reminded us in his recent book *The Health Gap: The Challenge of an Unequal World*, people with mental ill health have a life expectancy between 10 and 20 years shorter than people with no mental illness. I am sure we all find that shocking.

Only a quarter of those with mental illness such as depression are receiving treatment, a figure that contrasts with 78% of those with heart disease and 91% of those with high blood pressure. A recent CQC report noted that, when facing a crisis, a shocking 32% of people do not know who to contact out of hours. Indeed, 24% of those who did know said they did not receive the care they needed.

It is not all doom and gloom—there has been some progress. Thanks to the persistence particularly of Liberal Democrats in the coalition Government, the first ever mental health waiting time standards were introduced. This was a real achievement and helped to bring mental health services into line with other NHS services, such as cancer and A&E waiting times. It was a tangible step on the journey towards parity of esteem. However, as the Mental Health Taskforce report earlier this year noted, for first appointments and for the right follow-on support, waiting times are still "unacceptably long". Only a couple weeks ago, the Education Policy Institute's report *Time to Deliver* found that only 18% of areas were meeting the four-week waiting times for routine cases and only 14% were meeting one-week waiting times for urgent cases. The noble Lord, Lord Lansley, drew attention to this lack of progress, and I very much look forward to hearing what the Minister has to say.

A number of factors underpin that lack of progress, and I want to focus first on the problems of funding, both disparity and historical underfunding. To their credit, the Government committed £1.25 billion to children and young people's mental health over the next five years, which is £250 million a year. Despite that commendable promise, only £143 million was released in the first year and of that, only £75 million was actually distributed to clinical commissioning groups. Even less got to the front line.

As we have already heard, last year, across the board, 40% of NHS mental health providers had their funding reduced, despite NHS England instructing commissioners to increase it. This raises serious questions as to whether funding is reaching the areas where it is most needed, and it highlights the damaging impact of the Government's refusal to ring-fence mental health funding. I know Jeremy Hunt said that he does not have the power to do that, but frankly, Governments, if they are so minded, can do something about it if they do not have the powers.

It is the same story with the £1 billion announced last year for mental health, much of which does not come on stream until the end of this Parliament. One could be forgiven for assuming that in last week's Autumn Statement, the Chancellor would have offered a lifeline to mental health services, as well as other areas of health and social care. Instead, the Government found £240 million for the expansion of grammar schools, but not a penny for the NHS.

On a more positive note, the introduction of the five-year forward view included dashboards, an initiative welcomed by the Royal College of Psychiatrists. I, too, welcome them as representing a viable solution to ensuring better accountability and transparency from clinical commissioning groups. Obliging CCGs to publish facts and figures on their spend on mental health and the services they deliver will go some way to addressing the funding disparity, and stop money intended for mental health being siphoned off elsewhere. What is being done to publicise and promote the CCG dashboards, and how will people be able to compare the performance of their local CCG with others in other parts of the country?

Funding impacts on other factors which are also preventing parity of esteem. The mental health sector, in particular, is suffering from recruitment and staff morale problems. As noted in the report of the noble Lord, Lord Crisp, on acute adult psychiatric care, *Old Problems, New Solutions*, these problems are in part due to disproportionate financial cuts. The same report found an 8% decrease in the number of mental health nurses between 2010 and 2014, while there was a 1% increase in physical healthcare nurses over that period. Given that NHS England estimates that implementing access and waiting time standards will require a 7% increase in the number of mental health nurses by 2020, how do the Government expect to achieve that standard without staffing levels rising?

It is not for lack of ideas, recommendations or reports that progress on parity has been unsatisfactory—nor is it, as many other noble Lords have said, solely about money. There are other, non-financial issues, including cultural issues, and that provides the starting point for the Values-Based Child and Adolescent Mental Health System Commission, which I had the privilege of chairing. Its report, published on 7 November,

[Baroness Tyler of Enfield]
explores how different values drive deep-seated culture, attitudes, decision-making, practice and behaviour—the invisible drivers, if you like—which can either inhibit or promote a truly system-wide approach to redesigning and transforming services. The report's 10 recommendations were all about how a more explicitly values-based approach with a shared language could really improve the mental health and well-being of children by focusing single-mindedly on what really matters to them. That report, and the recent report *Time to Deliver*, by the Education Policy Institute, chaired by my right honourable friend Norman Lamb, had a number of important recommendations. In particular, it proposed that the Prime Minister should announce a national challenge on children's mental health. Can the Minister indicate how the Prime Minister intends to respond to that recommendation?

In conclusion, we should aim to achieve a healthcare system in which parity of esteem means that mental healthcare is not only as good as physical healthcare but is delivered, as the recent King's Fund report recommends, as part of an integrated approach to health and well-being, as my noble friend Lord Alderdice so powerfully reminded us this evening.

7.21 pm

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to wind up for the Opposition tonight and congratulate the noble Lord, Lord Alderdice, on what can be described only as a powerful tour de force. It was a fascinating insight into parity of esteem, as he saw it, in Northern Ireland more generally, which set the context for our debate. Almost all noble Lords have agreed with his proposition that, despite any number of pronouncements, policies and changes in the law, mental health continues to be a Cinderella service. Certainly, my impression of mental health services is that, although they came as part of the health service in 1948, although in the original structures they had their own hospital management committees, which were brought into area health authorities and then district health authorities—and then there was the development of NHS trusts and foundation trusts—and although they were in some cases integrated with those organisations and in some cases were not, they remained invisible throughout. It is a service that continues to be invisible when it comes to the key policy decisions that the Government, NHS England and the regulators make on the health service.

From a managerial point of view it is my impression that, once you become a manager in a mental health service, you stay a manager there—you do not move over. You are not perceived to have the qualities needed to become a leader in a more acute trust. If you look at the NHS people seconded into the department, NHS England or the regulators, you can see how few of them are experienced in mental health services. The noble Lord, Lord Lansley, suggested that this was rather underpinned by the financial system of mental health services whereby, because there is no tariff-based system, clinical commissioning groups tend to negotiate around the tariff and then what is left goes under block contracts to mental and community health services. This puts them at a disadvantage.

Although structures are not important, there is an issue in relation to both the culture and some of the structural issues which seems to account for the lack of focus on and priority for mental health services. Yet my experience when I chaired an acute NHS foundation trust was that many of the challenges we faced were because of the lack of proper support for patients with mental health problems. In any emergency department there will be a huge number of people with these issues. Unless there are properly based mental health services, working side by side with the acute trust, you end up with people inappropriately cared for in inappropriate places, with their outcomes often getting worse and worse.

The noble Baroness, Lady Hollins, asked the Minister a very good question about the sustainability and transformation plans. She thought that the department should not sign off STPs unless it was satisfied that the principles of parity of esteem were fully embraced within them. That is a very good suggestion which I hope the noble Baroness will agree to consider. I have looked at the names of the leaders of the 44 sustainability and transformation plans. They are clearly eminent people, many of whom I know, so there is no doubt that NHS England has appointed people of high calibre. However, they are mainly chief executives of acute trusts, clinical commissioning groups and, in one or two cases, local authorities—particularly Birmingham and Manchester. Why is this? Why have we not turned to mental health chief executives to lead some of these STPs? In my experience, mental health services often know a lot about the system because their clients impact on so many aspects of the service. If we want to make a real, visible indication that mental health services are important, we should look for leaders from mental health services to lead the sustainability and transformation plans. Even if that does not happen, I hope that both NHS England and the Department of Health will ensure that legal requirements for parity of esteem are applied before they are signed off. More than that I hope it is recognised that, unless you put mental health right at the heart of these plans, the ambitions in them are very unlikely to be realised.

I will briefly come to the question of finance. We know that the Government have ordered the NHS to put more money into mental health services. We have heard from noble Lords about the commitment for £1 billion more for mental health by 2020-21. We also heard from the noble Lord, Lord Prior, only last week, that the spend on mental health in 2015-16 is up by 8.4% on the previous year. He said that,

"there is clear evidence that the money that we have been talking about is getting through".—[*Official Report*, 16/11/16; col. 1417.]

Yet most noble Lords who have spoken would say that they disagree that the money is getting through to the front line. I do not know whether the Minister has seen the recent work by the Royal College of Psychiatrists on mental health services for children and adolescents. It points out that 52 CCGs in England are allocating less than 5% of their total mental health budgets to services for children and young people. We know of the horrendous problem of young people having to be sent to places hundreds of miles away from their homes because of a lack of facilities. We have also

heard, from other noble Lords, that the money simply does not seem to be getting through to other mental health services. Is the noble Baroness assured of the accuracy of the returns made by the NHS to her department on the sharing out of the mental health budget, because there is a suspicion that there has been a rebadging of existing programmes to massage the figures to make it look as though mental health spending is up when the clear experience on the front line is that services are being squeezed and squeezed?

I do not doubt Ministers' good intents in regard to mental health and ensuring that parity of esteem is achieved. However, the reality is that on the front line mental health services continue to be discriminated against and services are under great threat. There is great concern that in the major changes we are going to see in the health service in the next two or three years as a result of the sustainability and transformation plans, mental health, far from being at the core of the changes, will once again be treated as the neglected hidden Cinderella service. I hope that the noble Baroness can prove us wrong.

7.31 pm

Baroness Chisholm of Owlpen (Con): My Lords, this has been an absolutely fascinating debate. As always, many experts have spoken on the subject. I will do my best to answer many of the questions—but I am certainly not the noble Lord, Lord Prior, who is the expert on this issue. If I fail to answer all the questions asked by noble Lords, I will make sure that we get back to them in writing.

I congratulate the noble Lord on securing this debate on parity of esteem between physical and mental health. I know that he has a keen personal and professional interest in this subject. I thank everyone who has contributed to this debate. I will answer their questions at the end of my speech.

The publication of the independent Mental Health Taskforce's *Five Year Forward View for Mental Health* in February this year has stimulated discussion and debate across both Houses. As we know, mental ill health is something that can affect any one of us: one in four of us, according to the latest figures. Yet despite the prevalence of mental health problems, the stigma associated with mental health persists, so creating a barrier to people talking about mental health problems and seeking help. We know this only too well. Whenever I go out for a meal with friends, within five minutes everybody is talking about their arthritis—as we are all getting so old in this House—or their recent operations. But how often do people ever say, "Actually, I had a breakdown two years ago", or, "I have been seeing a counsellor because I am worried about my child who has autism"? Very rarely are these issues brought up. We have a lot to do to try to make those conversations as normal as ones in which people talk about their physical health.

We are committed to tackling this stigma and this year announced a further £12.5 million of support to the national Time to Change anti-stigma programme up to 2020-21, which seeks to change attitudes to mental health. Indeed, since the programme began, about 3.5 million people have reported improved attitudes to mental health.

Mental ill health is still the single largest cause of disability, costing the UK economy around £105 billion per year, and represents 23% of the overall UK health burden. The coalition Government enshrined parity of esteem in the Health and Social Care Act 2012, as the noble Baroness, Lady Tyler, said. They also introduced the first mental health waiting times standards for access to psychological therapies in 2015 and early intervention in psychosis from 2016. These are being met by the majority of the NHS.

Following on from that, we are on the cusp of an ambitious transformation programme in mental health. But, as my noble friend Lord Lansley said, we have to recognise the scale of the challenge. As all noble Lords are only too aware, we are starting from a very low base due to chronic historical underfunding of the service. As the noble Lord, Lord Alderdice, mentioned, mental health has been the Cinderella of healthcare. We are now investing unprecedented amounts in mental health and require CCGs to continue to increase their spending on mental health each year. We have set out additional investment to transform children and young people's mental health of £250 million each year up to 2020-21 and have set out additional investment to improve services for eating disorders, bringing the total investment to £1.4 billion by 2020-21.

Alongside this, as the noble Lord, Lord Oates, mentioned, we are working across government to deliver a robust five-year mental health data plan to substantially improve data and information about mental health services and young people. But this is not just about data collection and funding; proper investment in the workforce is absolutely essential. So we are working with Health Education England as it develops a workforce strategy, expanding both the skills of existing staff and the workforce itself. Work between the department and NHS England is ongoing to make the best use of mental health beds to ensure that people who need them can get them close to home. We have funded an extra 56 mental health beds for children and young people.

We know that the role of front-line services, including primary and community care, is paramount, particularly for those in crisis. NHS England has invested in crisis resolution and home treatment teams to provide effective intensive home treatment as an alternative to hospital admission. As several noble Lords, including the noble Lords, Lord Oates and Lord Alderdice, mentioned, primary care has a vital role to play in helping people before they even reach a crisis. The taskforce report recommended that by 2020 all GPs should have mental health training, which of course we support. Leading on from this, we have also invested heavily in liaison psychiatry services in emergency departments for patients in crisis. This will save an average hospital £5 million per year by reducing the number and length of admissions to beds. As the noble Baroness, Lady Hollins, mentioned, even more important is the potential for those in crisis to be seen and treated at an early stage. The department has funded nine pilots for street triage, managed by police forces working with NHS front-line partners. Nearly all the street triage pilot schemes resulted in a reduction in the use of Section 136 detentions. All these areas continued the service after the pilots finished. Today, 39 out of 40 police forces in England have access to a street triage service.

[Baroness Chisholm of Owlpen]

Public Health England is developing a mental health prevention concordat focusing on suicide prevention which will be published next year. We will strengthen the cross-government suicide prevention strategy, including addressing self-harm. NHS England will develop an evidence-based treatment pathway for self-harm during 2017-18 and 2018-19. We also plan to roll out liaison and diversion services nationally by 2020-21, ensuring that people who come into contact with the criminal justice system have their needs assessed, thus helping magistrates and judges divert vulnerable offenders to the most appropriate place of treatment. This work is already beginning to have some success—and I can endorse that. I work closely with an addiction charity in Gloucester, called the Nelson Trust, and it accepts exactly these kind of vulnerable people into the charity's care for treatment, having been referred from the CJS.

The department and NHS England will continue accountability and ensure equal priority for mental and physical health through a number of mechanisms, such as the CCG improvement and assessment framework and the five-year forward view for mental health dashboard. These will monitor progress on commitments to transform mental health services, and the public availability of data will improve accountability for patients and the public.

I want to cover some of the points that have been raised. My noble friend Lord Lansley asked how much progress has been made for 2016-17 in securing access standards and when people will be made aware of the objectives for 2017-18. We have standards on IAPT access and on EIP and CYP eating disorders, and further plans for developing pathways are set out in the NHS England task force's implementation plan. Independent experts at the Royal College of Psychiatrists are reviewing and supporting implementation and will report next year.

The noble Lord, Lord Oates, talked at length about suicide, and the noble Lord, Lord Cotter, also referred to this. It is a very important point. As noble Lords will know, the *Five Year Forward View for Mental Health* set out the ambition that the number of people taking their own lives will be reduced by 10% nationally compared with the 2016-17 level. To support this, by 2017 all CCGs will contribute fully to the development of the plans.

We are absolutely committed to improving access to mental health services. We introduced the first waiting times for mental health talking therapies—mentioned by the noble Lord, Lord Oates—as well as early intervention in psychosis. By 2020-21 we will implement a comprehensive range of community-based mental health pathways of care and standards. We are also expanding access to the successful talking therapies programme so that by 2020-21 a further 600,000 people will be able to receive the care they need.

The noble Lords, Lord Oates and Lord Cotter, also mentioned children and young people. By 2020-21 there will be a significant expansion of access to high-quality mental health care for children and young people. At least 70,000 additional children and young people each year will receive evidence-based treatment, representing an increase in access to NHS-funded community services to meet the needs of at least 35% of those with diagnosable mental health conditions. To support this objective, by 31 October 2016 all local areas should have expanded, refreshed and republished their local transformation plans for children and young people's mental health. Refreshed plans should detail how local areas will use the extra funds committed to support their ambitions across the whole local system.

The noble Lord, Lord Hunt, and the noble Baroness, Lady Hollins, mentioned tariffs and funding. We recognise that block contracts are an issue and make it less transparent. We are working to address this. NHS England has proposed new payment approaches for adults and older people. These outcome-based payment requirements focus on improvements of care by linking payment to quality outcomes.

I think I have covered most of the questions asked. If not, I will of course write to noble Lords. What has really come out tonight is that it is not as simple as legislating for or discussing these issues. We must work with the NHS professionals and beyond to truly establish equal priority for mental and physical health. As the noble Lord, Lord Alderdice, said, this needs to be a cross-party, multifaceted approach. We need to challenge the stigma surrounding this issue and look at the role of primary care, which is paramount in this. I thank noble Lords again for all the points raised in the debate.

House adjourned at 7.44 pm.

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