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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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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.

House of Lords

Wednesday 7 December 2016

3 pm

Prayers—read by the Lord Bishop of Bristol.

Food Waste
Question

3.07 pm

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

To ask Her Majesty's Government what further steps they plan to take to reduce the amount of food waste produced by consumers and by the retail and hospitality sectors.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, Courtauld 2025 brings together all parts of the food system to reduce food waste, from farmer to producer and from retailer to consumer. It goes further than before, with targets to be reached by 2025 including a 20% reduction in UK food and drink waste. WRAP has established industry-led working groups to address key issues including reducing waste from fresh produce, meat protein, dairy, and the hospitality and food sector, and increasing surplus food redistribution.

Baroness Jones of Whitchurch (Lab): I thank the Minister for that reply. He will know that, despite our best efforts, the level of household food waste being recycled has stalled, that less than 50% of local authorities collect food waste separately and that food manufacturers are continuing to send an unacceptably high level of food waste to landfill. In these circumstances, does it not make sense for the Government to stop relying purely on voluntary agreements—although they have their place—and to introduce mandatory food waste reduction targets in England across the supply chain? This approach has already worked and made a significant difference in Scotland, Wales and many European countries. Is it not time that we took similar robust action in England?

Lord Gardiner of Kimble: My Lords, the Courtauld Commitment 2025 is a very positive step. In the UK each year, there are 10 million tonnes of food and drink waste, around 70% of which is from households, and 1.9 million tonnes of food waste from households goes to landfill, compared with 2,000 tonnes from manufacturing. We need to work with WRAP and with industry and consumers to remedy this unacceptable situation. WRAP's Love Food, Hate Waste campaign is directed towards consumers and is a key priority.

Lord Krebs (CB): My Lords, my wife is a trustee of the Oxford food bank, which collects fresh food from wholesalers and retailers 365 days a year to distribute to local charities. Is the Minister aware that many of the supermarkets in Oxford are reluctant to provide food to the Oxford food bank? Instead they send it to landfill as waste, simply because it is too much trouble to hand it over to the army of volunteers who would like to come and collect it. Is there anything that the Government could do to encourage supermarkets to help organisations such as the Oxford food bank?

Lord Gardiner of Kimble: My Lords, the first thing I would say is that I very much appreciate the valuable work that FareShare, Company Shop and the Oxford food bank are doing. It is absolutely essential that good surplus food does not go to waste but is directed in the waste hierarchy first for human consumption and then, if it is not fit for that, for animal consumption. The waste hierarchy is very important. I will take up the Oxford issue, because 95% of all supermarkets are engaged in the Courtauld Commitment, and part of that is precisely directed to the redistribution of food.

Earl Cathcart (Con): My Lords, what is the annual cost to families of wasting food, and what are the environmental emission consequences of food wastage?

Lord Gardiner of Kimble: My Lords, the cost of what is wasted is £470 a year for the average household, and £700 a year for the average household with children. In turn, avoidable food waste is the equivalent of the CO_2 emissions produced by over 7 million cars per year.

Baroness Parminter (LD): My Lords, the results of the third phase of the voluntary Courtauld Commitment with business are due imminently. Are the Government considering asking WRAP to publish company names, or to legislate, if reductions in food waste are not secured?

Lord Gardiner of Kimble: My Lords, the results are not published yet but I will look at that third phase. The Courtauld Commitment 2025 is already even more robust, so I am looking for progress and I shall be working with colleagues to ensure that that is the case.

Baroness Jenkin of Kennington (Con): My Lords, I declare my interest as a board member of WRAP. How might the Government's forthcoming 25-year environment plan and 25-year food and farming plan help to promote further action to reduce food waste?

Lord Gardiner of Kimble: My Lords, my noble friend is right that the 25-year environment plan provides an opportunity. The first phase of that will be public consultation, and I am very much looking forward to observations and so forth. Dealing with the food waste issue must be part of our long-term vision of a better environment.

Baroness McIntosh of Hudnall (Lab): My Lords, does the Minister agree that a significant cause of food waste is the overcautious use of sell-by and best-before dates? Does the scheme he has referred to

[Baroness McIntosh of Hudnall]
include a review of how such dates are used? Frequently, common sense will tell you that something with a short date has potentially much more life in it than you are allowed to give it.

Lord Gardiner of Kimble: I very much sympathise with the noble Baroness. That is certainly part of WRAP's work; indeed, it has already been part of clarifying date-labelling, for precisely the reasons the noble Baroness has outlined.

Lord Vinson (Con): My Lords, does the Minister realise that 100 years ago, most food waste was fed to pigs? Now, millions of tonnes of food that is suitable for humans one day is regarded as unsuitable for pigs the next. This is a natural and sensibly environmental way of using up food waste, other than where it can be used for human consumption. Will he look into the regulations that prevent food waste being fed to pigs, the natural and sensible outlet?

Lord Gardiner of Kimble: My Lords, there are difficulties with that, I am afraid, precisely because of what happened in 2001 and so forth. I will have to disappoint my noble friend.

Judicial Independence

Question

3.13 pm

Asked by ***Lord Beith***

To ask Her Majesty's Government what steps they are taking to promote public understanding of the rule of law and the independence of the judiciary.

Lord Henley (Con): My Lords, the Government are committed to maintaining the independence of the judiciary and the rule of law. Both are vital to our future success. In particular, the Lord Chancellor is working with the judiciary and others across the justice system to encourage better public education on the role of the judiciary and how it operates. Greater understanding supports efforts to ensure a diverse and representative judiciary, helping to protect the vital role of the independent judiciary for the long term.

Lord Beith (LD): My Lords, I thank the Minister for that answer. Does he agree that supporters and critics of Brexit ought to unite in insisting that Governments are not above the law, and that judges, however inconvenient and open to contest on appeal their judgments sometimes are, are an essential arbiter of what the law is until Parliament decides to change it? Ought we not to be proclaiming these principles from the rooftops, in the Cabinet Office, in the classroom and even in newspaper offices?

Lord Henley: My Lords, I thought we were, and I thought my noble and learned friend Lord Keen did so only last week. I thought my right honourable friend the Lord Chancellor did so very firmly in Questions in another place yesterday—I could repeat her answers to all the questions—and I will continue to do so myself.

Lord Beecham (Lab): My Lords, when the right-wing press launched its unprecedented assault on the High Court judges following their judgment in the Brexit case, Members across your Lordships' House were dismayed by the lukewarm reaction of the Prime Minister, the Lord Chancellor and the Attorney-General. Since then, the same newspapers have conducted a personalised assault on members of the Supreme Court, collectively and individually, eliciting a similarly feeble response. Why have the Government not defended the freedom and independence of the judiciary with the same much-admired vigour of the noble and learned Lord, Lord Keen, who, despite being involved in the case on behalf of the Government, gave forceful expression to the need to respect the function of the courts and individual judges in the execution of their duty?

Lord Henley: My noble and learned friend did exactly that, as have other colleagues throughout the Government. They have also stressed—this is important to remember—that we are not responsible for what appears in the press, and we are not the police of the press.

Viscount Hailsham (Con): My Lords, should the higher judiciary's integrity and independence come under renewed attack, will my noble friend encourage his senior ministerial colleagues and, in particular, the Lord Chancellor, to defend the judges with the robustness that their predecessors would have shown?

Lord Henley: My Lords, I can certainly remember one of my right honourable friend the Lord Chancellor's predecessors and his robust defence of the judiciary. But I have to make it clear that she has made a robust defence of the judiciary, and all members of the Government will continue to do so.

The Lord Bishop of Leeds: My Lords, will the Minister define a little further what is meant by public education, as it seems that one of the most powerful shapers of world views is what people see in the headlines of newspapers and what they see in the media, not just what is taught to them rationally, for example in schools?

Lord Henley: My Lords, I agree with the right reverend Prelate; it is very important that we listen to what is in the press. But I cannot police what is in the press. All I was saying in my original Answer is that that is part of the educative process. What Ministers say is also important. That is why I repeated what my right honourable friend the Lord Chancellor said, and what my noble and learned friend Lord Keen said.

Lord Brown of Eaton-under-Heywood (CB): My Lords—

Lord Goldsmith (Lab): My Lords—

Lord Pearson of Rannoch (UKIP): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Cross Benches.

Lord Brown of Eaton-under-Heywood: Does the Minister agree that the real vice and mischief of misconceived attacks on the integrity and good faith of the judges is not the hurt that it causes the judges—judges are not there to be popular and they tend to develop pretty thick skins—but rather the fact that it undermines the public trust and confidence in the administration of justice, and it is that which damages the rule of law?

Lord Henley: The noble and learned Lord is quite right, and right to emphasise that judges have in themselves very thick skins—the noble and learned Lord will know this. It is also right, as I made clear in my original Answer, that we are very keen to see greater understanding of the role of the judiciary and how it operates. The Government will continue to support that.

Lord Goldsmith: My Lords, it is not just understanding what the judges do that matters but the confidence to which the Minister himself referred. Does he agree that as we look forward, if we do, to a post-Brexit world we will need to have utter confidence in our legal system to reassure business and to attract foreign investors, and that anything that is done now to damage that long-term future by applauding short-term political name-calling is to be regretted?

Lord Henley: My Lords, I think that I can only repeat what my noble and learned friend said earlier; we have the utmost faith in the judiciary and will continue to do so.

Lord Pearson of Rannoch: My Lords, do the Government agree that it is an insult to the British people to suggest that they do not understand the rule of law? Is not the truth underlying this Question that those who do not like the referendum result are trying to use the law to overturn it?

Lord Henley: My Lords, the noble Lord is tempting me to comment on things that it would not be appropriate for me to comment on.

Lord Lester of Herne Hill (LD): My Lords, is the Minister aware that I have tried twice to find out from the Government whether there is guidance as to what Ministers should do in performance of their Section 3 duty to uphold judicial independence? On the last occasion, the noble and learned Lord, Lord Keen of Elie, directed me to the *Cabinet Manual*, but it gives no guidance except a reference to judicial independence. Will the Minister ask his colleagues to give some written guidance to themselves about how they should comply with their Section 3 duty—and, in doing so, will he advise his colleagues to reject the idea in today's *Daily Mail* that we should take the American practice of electing judges instead of the practice that, for example, the noble and learned Lord, Lord Mackay of Clashfern, very clearly instituted in the past?

Lord Henley: My Lords, I do not think that the noble Lord would expect me to comment on what appeared in the *Daily Mail* today, and I have no intention of doing so. But I shall note what he said about guidance to Ministers and pass it on to my right honourable friends.

Lord Tebbit (Con): My Lords, it is important that we all reassert in absolute terms the integrity of the rule of law and the independence of the judiciary, but does my noble friend recollect that in the debates that ran before the abolition of capital punishment, one argument that was frequently put was that the mistakes made by the judiciary could not be rectified after an execution?

Lord Henley: My Lords, my memory goes back quite a long way but I do not actually remember all the debates in detail on the abolition of capital punishment.

Technical Education and Apprenticeships

Question

3.22 pm

Asked by ***Baroness Pidding***

To ask Her Majesty's Government what steps they are taking to raise the prestige of technical education and apprenticeships and to ensure that they are viewed positively by young people, potential employers and the wider public.

Viscount Younger of Leckie (Con): My Lords, technical education reforms based on the panel recommendations of the noble Lord, Lord Sainsbury, will provide a high-quality technical track centred around 15 routes preparing individuals for skilled employment. We are raising the reputation of apprenticeships, creating a world-class system, offering high-quality apprenticeships for people of all ages and from all backgrounds. Investment in careers over this Parliament totalling £90 million will ensure that every young person has access to advice to fulfil their potential.

Baroness Pidding (Con): My Lords, I know the Government are committed to ensuring that apprenticeships are as accessible as possible to all people from all backgrounds. Awareness of those opportunities is key. Can my noble friend the Minister advise what steps the Government are taking to ensure that we engage at an early stage with schools so that teachers and pupils are aware of the great opportunities apprenticeships can offer, either alongside academia or as an alternative route, making it clear that apprenticeships can be an equally distinguished route into a successful and fulfilling career?

Viscount Younger of Leckie: My Lords, we legislated through the Education Act 2011 to require schools to secure impartial and independent careers guidance, including on apprenticeships for 12 to 18 year-olds. It is important for young people to have a range of options presented to them and be well informed on what those options are. We continue to raise the profile and esteem of apprenticeships with young people by featuring successful apprentices in the Get In Go Far campaign, so that young people see apprenticeships as a high-quality and prestigious path to a successful career, just as much as they might in heading in another direction, such as to university.

Baroness Wall of New Barnet (Lab): My Lords, the noble Baroness raises some very interesting points, which have been around for a long time. Since the Labour Government raised the profile of apprenticeships, things have moved on. One thing that employers find is that parents are often the issue—they sometimes feel that being an apprentice is not as good as going to university. I just wonder how we can help them change their mind and understand the importance of an apprenticeship to their children's future.

Viscount Younger of Leckie: The noble Baroness makes a very good point. Parents have an important role, particularly with young people—we know that teenagers are not always the most communicative of individuals. Early on, parents have a role to inspire. That is why the Get In Go Far campaign has a role for parents as well. It is accompanied by advertisements on TV and it is clear that parents as well as their children are looking at this. Since August 2016, the campaign has resulted in more than 125,000 people starting an application for an apprenticeship.

Baroness Butler-Sloss (CB): My Lords, we are about to embark on what may be a lengthy discussion of the Higher Education and Research Bill. Will the Government make it clear that they treat colleges of further education as of equal importance to the higher education that we will be discussing?

Viscount Younger of Leckie: That is certainly right. We know, for example, that the number of learners in further education studying for qualifications at level 4 and above has gone down by 3,800. This was partly because there was, perhaps, a little too much emphasis on the higher education side. A balancing out is needed and our advertisements, and our work with parents, schools and the university technical colleges—which I suspect my noble friend Lord Baker is about to ask me about—are playing a part.

Lord Baker of Dorking (Con): I thank my noble friend for the introduction. Is the Minister aware that university technical colleges now send 44% of their students to technical universities—more than the national average—and that they produce 30% of apprenticeships, which is higher than the national average of 8%? If we are to close the skills gap, we must produce more technical home-grown talent. The only way to do that is to expand university technical colleges.

Viscount Younger of Leckie: My noble friend is absolutely right and I pay tribute to him, and indeed to Dearing, for the part they played in setting up the UTC programme. I remember standing at this very Dispatch Box about three years ago and speaking about just seven UTCs; there are now 48. We continue to look at the performance of the UTC model and learn lessons from those that are open to ensure that they offer a great education for young people who want to follow a technical path and that, crucially, they produce the necessary skills to help us grow our talent.

Baroness Garden of Frognal (LD): What consideration have the Government given to including technical and vocational achievement in school league tables and to encouraging schools to celebrate their apprenticeship leavers with the same pride that they show in their university entrants?

Viscount Younger of Leckie: That is a good point. It is very much up to schools to make those decisions but, again, as part of our campaign—our PR—we are encouraging schools in what they do to give advice on careers in general. This is very much part of it.

Lord Watson of Invergowrie (Lab): My Lords, employers spend some £3 billion each year on training but only about 15% of that works its way through to further education colleges. Now the Government are poised to make another £350 million of cuts to the adult skills budget, which will impact on part-time and adult learners at FE colleges. If the Government really are committed—as I believe they are—to widening access to and participation in technical and vocational education, what action does the Minister intend to take to promote the importance of the further education college sector and encourage more employers to use it?

Viscount Younger of Leckie: One of the initiatives—there are several—is that we will be setting up, by April 2017, an institute for apprenticeships. The aim will be to have an employer-led approach to ensure that there are more apprenticeships. I think the House will know that we aim to set up 3 million over this Parliament. Also, through the Technical and Further Education Bill, we are extending the remit of the apprenticeship institute to cover college-based, technical education from April 2018.

Lord Lingfield (Con): My Lords, in the course of my work as chairman of the Chartered Institution for Further Education, I have become aware that there are large numbers of would-be mature students, all well-motivated, who would like to start technical courses. What options will the Government make available so that people of all ages can start such a course?

Viscount Younger of Leckie: We had quite a discussion yesterday on the Higher Education and Research Bill about the importance of mature students and part-time students coming back on to the training ladder. This is one of the many initiatives we have to help not just young people.

Lord Clark of Windermere (Lab): Will the Minister advise the House of the Government's latest thinking on introducing apprenticeships for fully qualified nurses? What discussions have the Government had with universities that currently provide degree qualifications for all qualified nurses?

Viscount Younger of Leckie: I may need to write to the noble Lord. The only answer I can give now with regard to the nursing profession is that health and science is an important part of the 15 new technical routes. There are five different routes one can go down. This was part of the Sainsbury review.

Railways: Industrial Action

Question

3.31 pm

Asked by ***Lord Dholakia***

To ask Her Majesty's Government what plans they have to ensure that rail franchises and companies have published detailed alternative travel plans in advance of the industrial action planned over the Christmas and New Year period.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, we condemn the industrial action being held over the coming weeks, and the further disruption this will cause to passengers. We urge the unions to call off these needless strikes.

Southern is working closely with Network Rail and fellow operators to mitigate the effects of these strikes as far as practicable, and is putting out as much information as it can to keep passengers informed on what travel arrangements will be in place.

Lord Dholakia (LD): My Lords, we now face 16 days of utter chaos, with a corresponding impact on travellers, tourists and, more importantly, our economy, and there is more to come. Is it not time for the Minister to accept that this crisis demands a tough response from the Government? Will they seriously consider taking control of the Southern franchise, if only by appointing an administrator until such time as the situation becomes normal?

Lord Ahmad of Wimbledon: The noble Lord raises a point we have mentioned before about the governance of this franchise, but the important thing is to segment this. The strikes taking place on Southern rail help no one. Let us bear in mind that of the 99% of people directly impacted by the new contract, only one person has not signed a new contract. Therefore we have to ask why the strikes, which I accept compound the challenges which the line faces, are still happening. However, the Government have put in place remedial action. The noble Lord will be aware of the appointment of Chris Gibb specifically to look at the issues and challenges faced by this network. He is due to produce a report for the Secretary of State at the end of this year.

Lord Bradshaw (LD): As an experienced railway manager who has dealt with many such intractable disputes, may I suggest to the Government that they need to move this logjam on both sides? First, any train on which passengers are travelling—these are long trains with 12 coaches—should have a second person who is qualified in the rules and regulations. Secondly, in return for that, the unions should undertake that that person will attend to the needs of passengers, check tickets, help disabled people and generally make himself available instead of sitting in the back cab of the train doing nothing. If that were done, I believe there would be the core of a solution.

Lord Ahmad of Wimbledon: The noble Lord is right, but let me assure your Lordships' House—indeed, I am sure that many noble Lords are aware of this very point—that the changes being implemented ensure that there is no loss of jobs on driver-only operated trains. Those who were conductors are now train supervisors. The duties outlined by the noble Lord are exactly the duties they will undertake.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister take on board the point made by the noble Lord, Lord Bradshaw, about people with disabilities? I declare no interest, living north of London. At Euston station it is possible to book somebody to help you if you have a mobility problem. You can book that in advance. However, I understand that is not possible when trains are altered at short notice. People with disabilities cannot rush to get trains when the platform is announced at the last minute. What can the Government do to ensure that station staff look after these people and make sure they get on trains?

Lord Ahmad of Wimbledon: The noble Baroness is of course right. The Government and train operating companies up and down the country do just that, and people who require special assistance can book in advance. In most cases they get the service and the extra assistance they require. There are issues on Southern in particular, which I know your Lordships' House is aware of. The cancellation of trains, whether because of a problem with Network Rail, an issue with scheduling or indeed the strikes, makes it difficult for those who require additional assistance to make the necessary bookings. The Government are acutely aware of this, and these points are being repeated in discussions with all people who are involved with the actions and the necessary solutions with regard to this service.

Baroness O'Cathain (Con): My Lords, surely a huge train crash is about to happen. When you get on these trains at the moment on the Southern route to Victoria, from Gatwick into Victoria there is literally not one inch to move. People come and put their wheeled luggage in the middle of the aisle, and if there was the slightest emergency, it would be horrific. Surely we are not waiting for that to happen before the Government can do something. Fire them—do something with them. It is just hopeless at the moment.

Lord Ahmad of Wimbledon: I know that my noble friend speaks from personal experience and exasperation at some of the challenges she has faced. I fully accept

[Lord Ahmad of Wimbledon]
that many Members of your Lordships' House are in the same position. That is why I have directly initiated, in co-operation with the Leader of the House, a regular review of some of the challenges which are directly being faced or on which representations have been made to Members of your Lordships' House on this important issue. As I have already said, the Government have appointed Chris Gibb to look at what actions can be taken to ensure that both the train operating company and Network Rail, which operates the track, work together on finding a reasonable, fast and efficient solution.

Lord Tunnicliffe (Lab): My Lords, in my career I have been a striker, thanks to the noble Lord, Lord Tebbit, a shop steward, an industrial relations negotiator, a line manager and a managing director. I have been through more disputes than I care to think about, and every dispute has had two sides. Is not the Minister painting a simplistic picture to say that it is just the trade unions? The Government control Network Rail and pull the strings of the train operating company; will they get in there and do something to solve this problem?

Lord Ahmad of Wimbledon: I fully respect the noble Lord's wide experience. However, I am sure that when he reads *Hansard*, he will see that I have not given a simplistic solution in my replies. It is a challenging situation, and, equally, I have accepted the principle that it is not just the strikes and that other challenges are caused by problems with both Network Rail and the train operating company. There is a need to find a solution, but the strikes are not helping. That is the point I was making.

Health Service Medical Supplies (Costs) Bill

First Reading

3.38 pm

The Bill was brought from the Commons, read a first time and ordered to be printed.

Procedure Committee

Membership Motion

3.38 pm

Moved by ***The Senior Deputy Speaker***

That Lord Fowler be appointed a member of the Select Committee in place of Baroness D'Souza.

Motion agreed.

Policing and Crime Bill

Report (2nd Day)

3.38 pm

Relevant documents: 3rd Report from the Joint Committee on Human Rights; 3rd, 4th and 8th Reports from the Delegated Powers Committee

Clause 84: Hot pursuit of ships in Scotland or Northern Ireland waters

Amendment 120

Moved by ***Baroness Chisholm of Owlpen***

120: Clause 84, page 109, line 33, leave out "or in Northern Ireland waters"

Baroness Chisholm of Owlpen (Con): My Lords, Section 32 of the Police (Northern Ireland) Act 2000 limits police jurisdiction throughout Northern Ireland and its adjacent UK waters within the seaward limits of the territorial sea in the same manner as Section 30 of the Police Act 1996 applies in England and Wales. However, within these limits, the police do not have powers suitable for the maritime context.

The new clauses proposed in this group comprise a new Chapter 6A of Part 4 of the Bill, making provision for the police and other law enforcement in Northern Ireland to have powers corresponding to those conferred on law enforcement in England and Wales and in Scotland by virtue of Chapters 5 and 6 of Part 4. In particular, new Chapter 6A provides Northern Ireland law enforcement with maritime-specific powers, such as to stop, board, detain and divert ships for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland. Unlike the provisions in Chapters 5 and 6 of Part 4, and at the request of the Northern Ireland Department of Justice, the powers are, however, limited to ships in the territorial waters of Northern Ireland and do not extend to international or foreign waters.

There are particular policing accountability and oversight arrangements in Northern Ireland, and it has not been possible for the Department of Justice to secure the necessary agreement with relevant stakeholders within the time available for the exercise of powers by law enforcement officers from England, Wales or Scotland in Northern Ireland waters in hot-pursuit situations. Again at the request of the Minister of Justice in Northern Ireland, these amendments would remove the hot-pursuit provisions that relate to law enforcement officers from outside Northern Ireland entering Northern Ireland waters. The Northern Ireland Assembly agreed the necessary legislative consent Motion in respect of these provisions on 28 November.

I note that the noble Lord, Lord Paddick, has an amendment in this group and I propose to respond to it when winding up. For now, I beg to move.

Lord Paddick (LD): My Lords, as the Minister has just said, my noble friend Lady Hamwee and I have Amendment 122A in this group. It concerns Chapter 5, which is headed "Police Powers: Maritime Enforcement in Connection with English and Welsh Offences".

The Bill gives extensive powers to the police in connection with preventing, detecting, investigating or prosecuting offences under the law of England and Wales in relation to a UK ship in England and Wales waters or international waters, a ship without nationality in England and Wales waters or international waters, a foreign ship in England and Wales waters or international

waters, or a ship registered under the law of a relevant territory in England and Wales waters or international waters. That seems to me to cover any ship anywhere in the world, although there are restrictions if the UK ship is in foreign waters or if it is a foreign ship in England and Wales waters, when either the Secretary of State's permission or, in some cases, that of the foreign state to which the ship is registered is required. In one place the Bill talks about "England and Wales waters" and in another it uses the words,

"within the territorial sea adjacent to England and Wales".

I am not sure why there is different wording in different parts. Perhaps the Minister can explain.

The powers are to stop, board, divert and detain, to search and obtain information, and to arrest and seize. Officers who can exercise these powers include special constables, port constables, customs officials and anyone else the Secretary of State specifies in regulations, subject only to the negative procedure. This gives extensive powers to a whole range of law enforcement officers without restriction in relation to the exercise of the powers relating to a UK ship in England and Wales waters on the basis that the law enforcement officer has reasonable grounds to suspect—the same low level of suspicion required to make an arrest or to carry out a stop and search in the street—that an offence under the law of England and Wales is being or has been committed, or there are reasonable grounds to suspect that the ship itself is being used in the commission of an offence.

3.45 pm

The powers include to require the ship to be taken to a port in England and Wales or elsewhere—although, if it is a port outside the UK, the Secretary of State's authority is required. Also included is the power to search the ship, the crew and the cargo for evidence and to search anyone on the ship for weapons. Not only that but the law enforcement officer can take anyone else with him to exercise those powers, and the person who accompanies the law enforcement officer can exercise those powers provided the law enforcement officer is supervising. Law enforcement officers are also protected under the legislation from criminal or civil proceedings if acting in good faith and where there are reasonable grounds.

As I am sure noble Lords will agree, these are extensive powers that can be exercised by law enforcement officers of any rank or any level of seniority, the implications of which can be serious and costly—diverting a ship into port and detaining it there, for example—for any offence under the law of England and Wales.

As the legislation is currently drafted, a special constable could, in theory, divert a ship into port and detain it there because he has reasonable grounds to believe that a minor assault or a minor act of criminal damage has taken place. As we argued in Committee, we believe the power should be restricted to indictable offences only that are specifically set out in regulations by the Secretary of State in the same way as the powers in relation to cross-border enforcement are restricted to serious offences specified by the Secretary of State in the same Bill. Surely the Government have in mind the types of offences these powers are intended to be deployed against. If they can specify them in relation to cross-border enforcement, why not in relation to these powers?

In Committee, the Minister suggested that, in other contexts, I had argued that we should put our trust in the operational judgment of chief police officers. I believe the noble Baroness was referring to my belief that the decision as to which of the currently available police ranks were used by a chief constable should be a matter for him or her dependent on the needs of the particular force, rather than being stipulated by the Secretary of State in regulations. That is a wholly different scenario. We are talking potentially about a crime reported in the middle of the night when the chief constable is soundly asleep and a special constable decides, as this legislation would allow him to do, to impound a cargo ship or a cruise liner because one of the crew members had slapped another one across the face. That is what this legislation, as drafted, allows.

The noble Baroness went on to say that we should trust the operational judgment of the police. I was a police officer for over 30 years, including a decade in operational roles on the street. I can assure noble Lords that I have ample evidence to suggest that the operational judgment of every police officer or special constable should not be trusted on every occasion. Indeed, an off-duty officer on a cruise who might get involved in an altercation resulting in him being assaulted might relish the opportunity to divert a cruise liner into port so that the assailant can be arrested.

The Minister went on to say that the police can investigate offences where they take place on other modes of transport, so why not ships? Even if the officer halts the train or stops the bus, the financial implications and the inconvenience caused to innocent passengers is slight compared with the potential consequences if a ship is diverted into port. I hope the Minister is clearer now as to why we should treat maritime vessels differently.

I would not have brought this amendment back at this stage if the Government had given a reasonable explanation for not agreeing with my Committee stage amendment.

Lord Blair of Boughton (CB): My Lords, it is an unusual pleasure for me to agree completely with the noble Lord, Lord Paddick.

Baroness Chisholm of Owlpen: The noble Lord, Lord Paddick, has again argued for the maritime enforcement powers in the Bill to be restricted to the enforcement of serious offences. As I indicated in Committee, we do not believe it is necessary to limit these powers in this way. The Government believe that we should trust the operational judgment of the police to determine when it is appropriate and proportionate to exercise their powers at sea. For example, we do not believe that the police would commit resources to interdict a vessel in international waters where there had been a theft of an item of, say, confectionery from a gift shop—which, incidentally, would be an indictable offence.

However, a police officer on, let us say, a UK-registered ferry should be able to act when the vessel is in international waters where a person commits a common

[Baroness Chisholm of Owlpen]
assault on another person, or where a person exhibits threatening or abusive behaviour. In both cases, we are talking about summary-only offences and in both cases the noble Lord's amendment would prevent the police acting, even though the law of the land applied and the actions of those individuals might none the less be triable in the courts of England and Wales. We do not impose restrictions on the categories of offences the police can investigate where they take place on other modes of transportation, so, again, I am unclear why we should treat maritime vessels any differently.

Lord Paddick: Can the Minister explain what happens at the moment if a summary-only offence is committed, for example, on a cross-channel ferry? How would that offence be dealt with?

Baroness Chisholm of Owlpen: I think that I will have to get back to the noble Lord on that point.

Lord Blair of Boughton: This is about the difference between a bus, a train and a ship. The ability to stop a ship and push it into harbour is a completely different level of activity from saying, "We're going to stop the train at Reading because somebody has been assaulted". I have listened to the argument made by the noble Lord, Lord Paddick, and I completely agree with him. It cannot be right that a single police officer can decide to turn around a cargo ship or a cruise ship in the Irish Sea for a summary offence. I accept that, as the Minister said, there are complications around theft, with the theft of some sweets from a shop being an indictable offence in some circumstances, but we have to make a definition somewhere. This is about being utterly reasonable, and I do not think that the Government are being reasonable here.

Baroness Chisholm of Owlpen: The police are professionals and they must have operational discretion as to when to exercise their powers. I know that a ship at sea is not a bus, which can just move into the side of the road, but a serious offence could have been committed. The police should be able to know when they need to exercise their powers. In answer to the noble Lord's question, there are currently no powers to take effective enforcement action in such circumstances, other than in relation to modern slavery and drug offences.

Viscount Slim (CB): My Lords, I am rather disappointed about the police in this situation. Certainly in my life, junior NCOs have taken charge of situations similar to this and had to make decisions. There must be somewhere within the constabulary either a lack of training or a lack of selection of their junior leaders.

Baroness Chisholm of Owlpen: I agree with the noble Viscount.

Lord Paddick: My Lords, I am glad that I brought back this amendment, if only to hear the noble Lord, Lord Blair, call me utterly reasonable. As for the Minister's faith in the ability of an off-duty police officer who becomes involved in a brawl on a cruise ship to make completely the right operational decision not to divert the vessel into port, that goes beyond my own experience and that of the noble Lord, Lord Blair, of the way in which it would be natural for some off-duty police officers to behave in such circumstances. Clearly, I am not going to press this to a Division, but I think the House recognises the considerable discomfort that both the noble Lord, Lord Blair, and I have over the legislation as proposed.

Amendment 120 agreed.

Amendment 121

Moved by ***Baroness Chisholm of Owlpen***

121: Clause 84, page 110, line 5, leave out "or Northern Ireland"

Amendment 121 agreed.

Clause 85: Restriction on exercise of maritime enforcement powers in hot pursuit

Amendment 122

Moved by ***Baroness Chisholm of Owlpen***

122: Clause 85, page 110, line 10, leave out "or Northern Ireland"

Amendment 122 agreed.

Amendment 122A not moved.

Clause 93: Interpretation

Amendment 123

Moved by ***Baroness Chisholm of Owlpen***

123: Clause 93, page 114, leave out lines 40 and 41

Amendment 123 agreed.

Clause 96: Hot pursuit of ships in England and Wales or Northern Ireland waters

Amendments 124 and 125

Moved by ***Baroness Chisholm of Owlpen***

124: Clause 96, page 117, line 12, leave out "or in Northern Ireland waters"

125: Clause 96, page 117, line 29, leave out "or Northern Ireland"

Amendments 124 and 125 agreed.

Clause 97: Restriction on exercise of maritime enforcement powers in hot pursuit

Amendment 126

Moved by ***Baroness Chisholm of Owlpen***

126: Clause 97, page 117, line 35, leave out "or Northern Ireland"

Amendment 126 agreed.

Clause 104: Interpretation

Amendment 127

Moved by ***Baroness Chisholm of Owlpen***

127: Clause 104, page 121, leave out lines 35 and 36

Amendment 127 agreed.

Amendments 128 to 136

Moved by ***Baroness Chisholm of Owlpen***

128: After Clause 104, insert the following new Clause—

"CHAPTER 6A

POLICE POWERS: MARITIME ENFORCEMENT: NORTHERN IRISH OFFENCES

Application of maritime enforcement powers: general

(1) A law enforcement officer may, for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland, exercise any of the maritime enforcement powers in relation to—

(a) a United Kingdom ship in Northern Ireland waters,

(b) a ship without nationality in Northern Ireland waters,

(c) a foreign ship in Northern Ireland waters, or

(d) a ship, registered under the law of a relevant territory, in Northern Ireland waters.

(2) In this Chapter, "the maritime enforcement powers" are the powers set out in—

(a) section (Power to stop, board, divert and detain) (power to stop, board, divert and detain);

(b) section (Power to search and obtain information) (power to search and obtain information);

(c) section (Power of arrest and seizure) (power of arrest and seizure).

(3) The following persons are "law enforcement officers" for the purpose of this Chapter—

(a) a constable who is a member of the Police Service of Northern Ireland or the Police Service of Northern Ireland Reserve,

(b) a person appointed as a special constable in Northern Ireland by virtue of provision incorporating section 79 of the Harbours, Docks, and Piers Clauses Act 1847,

(c) a designated customs official within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act),

(d) a designated NCA officer who is authorised by the Director General of the National Crime Agency (whether generally or specifically) to exercise the powers of a law enforcement officer under this Chapter, or

(e) a person of a description specified in regulations made by the Secretary of State.

(4) Regulations under subsection (3)(e) are to be made by statutory instrument.

(5) A statutory instrument containing regulations under subsection (3)(e) is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Regulations under subsection (3)(e) may not make devolved provision except with the consent of the Department of Justice in Northern Ireland.

(7) For the purposes of subsection (6), regulations under subsection (3)(e) make devolved provision if and to the extent that—

(a) the effect of the regulations is to confer functions under this Chapter on a person of a description specified in the regulations,

(b) it would be within the legislative competence of the Northern Ireland Assembly to confer those functions on persons of that description in an Act of the Northern Ireland Assembly, and

(c) the consent of the Secretary of State would not be required under section 8 of the Northern Ireland Act 1998 in relation to a Bill conferring such functions.

(8) This section is subject to section (Restriction on exercise of maritime enforcement powers) (which makes provision about when the authority of the Secretary of State is required before the maritime enforcement powers are exercised in reliance on this section)."

129: After Clause 104, insert the following new Clause—

"Restriction on exercise of maritime enforcement powers

(1) The authority of the Secretary of State is required before a law enforcement officer exercises any of the maritime enforcement powers, in reliance on section (Application of maritime enforcement powers: general)(1), in relation to a foreign ship, or a ship registered under the law of a relevant territory, within the territorial sea adjacent to Northern Ireland.

(2) The Secretary of State may give authority under subsection (1) in relation to a foreign ship only if—

(a) the home state has requested the assistance of the United Kingdom for the purpose of preventing, detecting or investigating an offence under the law of Northern Ireland,

(b) the home state has authorised the United Kingdom to act for that purpose, or

(c) the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) otherwise permits the exercise of the powers in relation to the ship."

130: After Clause 104, insert the following new Clause—

"Power to stop, board, divert and detain

(1) This section applies if a law enforcement officer has reasonable grounds to suspect that—

(a) an offence under the law of Northern Ireland is being, or has been, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section (Application of maritime enforcement powers: general), or

(b) a ship in relation to which those powers are so exercisable is otherwise being used in connection with the commission of an offence under that law.

(2) The law enforcement officer may—

(a) stop the ship;

(b) board the ship;

(c) require the ship to be taken to a port in Northern Ireland.

(3) The law enforcement officer may require the master of the ship, or any member of its crew, to take such action as is necessary for the purposes of subsection (2)(c).

(4) A law enforcement officer must give notice in writing to the master of any ship detained under this section.

(5) The notice must state that the ship is to be detained until the notice is withdrawn by the giving of a further notice in writing signed by a law enforcement officer."

131: After Clause 104, insert the following new Clause—

"Power to search and obtain information

(1) This section applies if a law enforcement officer has reasonable grounds to suspect that there is evidence relating to an offence under the law of Northern Ireland (other than items subject to legal privilege) on a ship in relation to which the powers conferred by this section are exercisable by virtue of section (Application of maritime enforcement powers: general).

(2) The law enforcement officer may search—

(a) the ship;

(b) anyone found on the ship;

(c) anything found on the ship (including cargo).

(3) The law enforcement officer may require a person found on the ship to give information about himself or herself.

(4) The power to search conferred by subsection (2) is a power to search only to the extent that it is reasonably required for the purpose of discovering evidence of the kind mentioned in subsection (1).

(5) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public other than an outer coat, jacket or gloves.

(6) In exercising a power conferred by subsection (2) or (3), a law enforcement officer may (amongst other things)—

(a) open any containers;

(b) require the production of documents, books or records relating to the ship or anything on it, other than anything that the law enforcement officer has reasonable grounds to believe to be an item subject to legal privilege;

(c) make photographs or copies of anything the production of which the law enforcement officer has power to require.

(7) The power in subsection (6)(b) to require the production of documents, books or records includes, in relation to documents, books or records kept in electronic form, power to require the provision of the documents, books or records in a form in which they are legible and can be taken away.

(8) The power of a law enforcement officer under subsection (2)(b) or (c) or (3) may be exercised on the ship or elsewhere."

132: After Clause 104, insert the following new Clause—

"Power of arrest and seizure

(1) This section applies if a law enforcement officer has reasonable grounds to suspect that an offence under the law of Northern Ireland has been, or is being, committed on a ship in relation to which the powers conferred by this section are exercisable by virtue of section (Application of maritime enforcement powers: general).

(2) The law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence.

(3) The law enforcement officer may seize and retain anything found on the ship which appears to the officer to be evidence of the offence, other than anything that the officer has reasonable grounds to believe to be an item subject to legal privilege.

(4) The power of a law enforcement officer under subsection (2) or (3) may be exercised on the ship or elsewhere."

133: After Clause 104, insert the following new Clause—

"Maritime enforcement powers: supplementary: protective searches

(1) This section applies where a power conferred by section (Power to stop, board, divert and detain) is exercised in relation to a ship.

(2) A law enforcement officer may search any person found on the ship for anything which the officer has reasonable grounds to believe the person might use to—

(a) cause physical injury,

(b) cause damage to property, or

(c) endanger the safety of any ship.

(3) The power under subsection (2) may be exercised on board the ship or elsewhere.

(4) A law enforcement officer searching a person under subsection (2) may seize and retain anything found if the law enforcement officer has reasonable grounds to believe that the person might use it for a purpose mentioned in paragraphs (a) to (c) of that subsection.

(5) Anything seized under subsection (4) may be retained only for so long as there are reasonable grounds to believe that it might be used as mentioned in that subsection.

(6) The power to search a person conferred by subsection (2) does not authorise a law enforcement officer to require the person to remove any clothing in public, other than an outer coat, jacket or gloves."

134: After Clause 104, insert the following new Clause—

"Maritime enforcement powers: other supplementary provision

(1) A law enforcement officer may—

(a) be accompanied by other persons, and

(b) take equipment or materials,

to assist the officer in the exercise of powers under this Chapter.

(2) A law enforcement officer may use reasonable force, if necessary, in the performance of functions under this Chapter.

(3) A person accompanying a law enforcement officer under subsection (1) may perform any of the officer's functions under this Chapter, but only under the officer's supervision.

(4) A law enforcement officer must produce evidence of the officer's authority if asked to do so.

(5) The powers conferred by this Chapter do not affect any other powers that a law enforcement officer may have."

135: After Clause 104, insert the following new Clause—

"Maritime enforcement powers: offences

(1) A person commits an offence if the person—

(a) intentionally obstructs a law enforcement officer in the performance of functions under this Chapter, or

(b) fails without reasonable excuse to comply with a requirement imposed by a law enforcement officer in the performance of those functions.

(2) A person who provides information in response to a requirement imposed by a law enforcement officer in the performance of functions under this Chapter commits an offence if—

(a) the information is false in a material particular, and the person either knows it is or is reckless as to whether it is, or

(b) the person intentionally fails to disclose any material particular.

(3) A law enforcement officer may arrest without warrant anyone whom the officer has reasonable grounds for suspecting to be guilty of an offence under this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale."

136: After Clause 104, insert the following new Clause—

"Interpretation

(1) In this Chapter—

"designated NCA officer" means a National Crime Agency officer who is either or both of the following—

(a) an officer designated under section 10 of the Crime and Courts Act 2013 as having the powers and privileges of a constable who is entitled to exercise the powers and privileges of a Northern Ireland constable (see paragraph 11(6) of Schedule 5 to that Act);

(b) an officer designated under that section as having the powers of a general customs official;

"foreign ship" means a ship which—

(a) is registered in a State other than the United Kingdom, or

(b) is not so registered but is entitled to fly the flag of a State other than the United Kingdom;

"home state", in relation to a foreign ship, means—

(a) the State in which the ship is registered, or

(b) the State whose flag the ship is otherwise entitled to fly;

"items subject to legal privilege" has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (N.I. 12)) (see article 12 of that Order);

"law enforcement officer" has the meaning given by section 104A(3);

"maritime enforcement powers" has the meaning given by section 104A(2);

"Northern Ireland waters" means the sea and other waters within the seaward limits of the territorial sea adjacent to Northern Ireland;

"relevant territory" means—

(a) the Isle of Man;

(b) any of the Channel Islands;

(c) a British overseas territory;

"ship" includes every description of vessel (including a hovercraft) used in navigation;

"ship without nationality" means a ship which—

(a) is not registered in, or otherwise entitled to fly the flag of, any State or relevant territory, or

(b) sails under the flags of two or more States or relevant territories, or under the flags of a State and relevant territory, using them according to convenience;

"United Kingdom ship" means a ship which—

(a) is registered under Part 2 of the Merchant Shipping Act 1995,

(b) is a Government ship within the meaning of that Act,

(c) is not registered in any State or relevant territory but is wholly owned by persons each of whom has a United Kingdom connection, or

(d) is registered under an Order in Council under section 1 of the Hovercraft Act 1968.

(2) For the purposes of paragraph (c) of the definition of "United Kingdom ship" in subsection (1), a person has a "United Kingdom connection" if the person is—

(a) a British citizen, a British overseas territories citizen or a British Overseas citizen,

(b) an individual who is habitually resident in the United Kingdom, or

(c) a body corporate which is established under the law of a part of the United Kingdom and has its principal place of business in the United Kingdom.

(3) References in this Chapter to the United Nations Convention on the Law of the Sea include references to any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom."

Amendments 128 to 136 agreed.

Clause 105: Extension of cross-border powers of arrest: urgent cases

Amendment 137

Moved by ***Baroness Chisholm of Owlpen***

137: Clause 105, page 123, line 29, leave out from "Scotland" to end of line 30

Baroness Chisholm of Owlpen: My Lords, Chapter 7 of Part 4 of the Bill closes a gap in cross-border powers by providing for urgent cross-border powers of arrest by police and other law enforcement officers across the three UK jurisdictions. Amendments 138 and 140 extend these powers so that they are exercisable by immigration officers and officers of Revenue and Customs, as well as National Crime Agency officers and designated customs officials who have the powers of Revenue and Customs officers. Amendment 137 provides that the powers are exercisable by British Transport Police officers in respect of offences wherever committed in the UK.

Amendment 149 inserts a new clause to provide that all the cross-border powers of arrest will be exercisable by Revenue and Customs officers in relation to any of the functions of HMRC or Revenue and Customs officers. This means that the powers will be available in relation to both tax and customs matters, rather than being confined to tax matters as they are now. The amendments also clarify the meaning of key terms as they apply to the exercise of the cross-border powers by Revenue and Customs officers and immigration officers. These amendments further enhance the effectiveness of law enforcement across the UK, ensuring that criminals are not able to evade the law simply by crossing an internal border. I beg to move.

Lord Rosser (Lab): I just raise one question on these amendments, although I readily accept that, perhaps if I had read everything sent to me, I would not be asking such questions. As the Minister said, this talks about an extension of powers to immigration officers, Revenue and Customs officers, the British Transport Police and others. Should these provisions have been included earlier in the Bill and it has just been realised that they were not there, hence these amendments being brought forward, or is this some completely new power? If so, what has been happening up to now? What have been the consequences of not having these powers? How detrimental has that been?

Baroness Chisholm of Owlpen: No, this is just closing the gap that we realised was there earlier on. It is not new.

Amendment 137 agreed.

Amendments 138 to 140

Moved by ***Baroness Chisholm of Owlpen***

138: Clause 105, page 126, line 43, at end insert—

"(9) In subsection (8), in the definition of "investigating force", the reference to a police force includes a reference to—

(a) the National Crime Agency;

(b) any of the following (to the extent that their functions relate to the investigation of offences)—

(i) officers of Revenue and Customs;

(ii) immigration officers;

(iii) designated customs officials within the meaning of Part 1 of the Borders, Citizenship and Immigration Act 2009 (see section 14(6) of that Act).

(10) In the application of this section in a case where the investigating force is a police force mentioned in subsection (9)(a) or (b)—

(a) the reference to a constable in subsections (4)(b) and (5)(b), and the reference to a constable in the investigating force in subsection (7)(a), is to be read as a reference to a National Crime Agency officer designated under section 9 or 10 of the Crime and Courts Act 2013 ("a designated NCA officer"), an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be);

(b) any reference to an officer of at least, or above, the rank of inspector in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade."

139: Clause 105, page 128, line 4, at end insert—

"(5A) Regulations under subsection (5) may include consequential provision, including provision amending any statutory provision; and, for that purpose, statutory provision has the same meaning as in section 137B (see subsection (10)(c) of that section)."

140: Clause 105, page 128, line 10, at end insert—

"(8) In the application of Schedule 7B in a case where the investigating force is a police force mentioned in section 137C(9)(a) or (b), any reference to an officer of at least, or above, a particular rank in the investigating force is to be read as a reference to a designated NCA officer, an officer of Revenue and Customs, an immigration officer or a designated customs official (as the case may be) of at least, or above, the equivalent grade.""

Amendments 138 to 140 agreed.

Schedule 16: Schedule to be inserted as Schedule 7B to the Criminal Justice and Public Order Act 1994

Amendments 141 to 148

Moved by ***Baroness Chisholm of Owlpen***

141: Schedule 16, page 344, line 30, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

142: Schedule 16, page 344, line 33, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

143: Schedule 16, page 344, line 42, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

144: Schedule 16, page 344, line 46, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

145: Schedule 16, page 345, line 9, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

146: Schedule 16, page 345, line 13, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

147: Schedule 16, page 345, line 37, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

148: Schedule 16, page 345, line 41, at end insert "who has not been involved in the investigation in connection with which the arrest was made"

Amendments 141 to 148 agreed.

Amendment 149

Moved by ***Baroness Chisholm of Owlpen***

149: After Clause 106, insert the following new Clause—

"Cross-border enforcement: officers of Revenue and Customs

In section 87 of the Finance Act 2007 (cross-border exercise of powers: officers of Revenue and Customs), in subsection (4) for "only in the exercise of a function relating to tax (including duties and tax credits)" substitute "in the exercise of any function of the Commissioners for Her Majesty's Revenue and Customs or of officers of Revenue and Customs, within the meaning of the Commissioners for Revenue and Customs Act 2005 (see section 51(2) to (2B) of that Act)"."

Amendment 149 agreed.

4 pm

Amendment 150

Moved by ***Baroness Chisholm of Owlpen***

150: After Clause 107, insert the following new Clause—

"Powers to require removal of disguises: oral authorisation

In section 60AA of the Criminal Justice and Public Order Act 1994 (powers to require removal of disguises), for subsection (6) substitute—

"(6) Subject to subsection (6A), an authorisation under subsection (3)—

(a) shall be in writing and signed by the officer giving it; and

(b) shall specify—

(i) the grounds on which it is given;

(ii) the locality in which the powers conferred by this section are exercisable; and

(iii) the period during which those powers are exercisable.

(6A) An authorisation under subsection (3) need not be given in writing where it is not practicable to do so but any oral authorisation—

(a) must state the matters which would otherwise have to be specified under subsection (6), and

(b) must be recorded in writing as soon as it is practicable to do so.

(6B) A direction under subsection (4) shall be given in writing or, where that is not practicable, recorded in writing as soon as it is practicable to do so.""

Baroness Chisholm of Owlpen: My Lords, these amendments respond to an amendment tabled by the noble Lord, Lord Dear, in Committee, which concerned the authorisation process for the exercise by a constable

of the power to require the removal of a disguise. Section 60AA of the Criminal Justice and Public Order Act 1994 is an important preventive tool, enabling the police to remove disguises in instances where they believe offences may be committed. As an intrusive power, quite rightly this requires prior authorisation from an officer of the rank of inspector or above.

However, as the noble Lord, Lord Dear, explained in Committee, the spontaneous arising or escalation of public order incidents does not always permit sufficient time for this approval to come in written form. Amendment 150 ensures that oral authorisation is permitted where it is the only practicable course of action. This authorisation must then be put in writing as soon as is practicable. Amendment 204 makes a consequential amendment to the Long Title of the Bill.

These amendments have been the subject of extensive discussions between officials and the relevant national policing leads, as well as between MPs and the former Policing Minister, Mike Penning. They will give greater clarity and flexibility to the police in the operational use of this power. I beg to move.

Lord Dear (CB): My Lords, I support the amendment. I remind the House that I tabled much the same amendment in Committee. I suggested then that the Minister might take the amendment back, consider it and bring it back on Report—which, of course, has been done. So I record my thanks to the Minister and the officials at the Home Office for their support.

Some misgivings were expressed in Committee that face veils—religious coverings—would be caught in this legislation. I would like to make it clear—as I think is now accepted—that the only change in this amendment is to allow authorisation for the police to use existing powers to be given orally and recorded in writing later. I hope that the fears concerning religious coverings have been allayed and I am very pleased to support the amendment.

Lord Campbell of Pittenweem (LD): My Lords, my name was on the original amendment but I was unable to take part in Committee because of prior commitments. The noble Lord, Lord Dear, deserves more than praise for the very rational way in which he introduced this issue. The result is an entirely practical one, which is entirely consistent with the maintenance of good order and allowing the police to exercise necessary functions, sometimes in very difficult circumstances. Therefore, I too am happy to support the amendment.

Amendment 150 agreed.

Schedule 17: Cross-border enforcement: minor and consequential amendments

Amendments 151 to 155

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

151: Schedule 17, page 350, line 42, leave out sub-paragraph (4)

152: Schedule 17, page 351, line 24, leave out sub-paragraphs (2) and (3)

153: Schedule 17, page 351, line 27, at end insert—

"( ) After subsection (2) insert—

"(2A) In the application of section 137C where a person is arrested under section 137A by an officer of Revenue and Customs in respect of a specified offence that is being investigated by an officer of Revenue and Customs—

(a) subsection (2)(b) is to be read as if (instead of requiring the detention to be authorised by both an officer of at least the rank of inspector in the arresting force and an officer of at least the rank of inspector in the investigating force) it required the detention to be authorised by an officer of Revenue and Customs of at least the grade equivalent to the rank of inspector;

(b) subsection (2)(c) is to be read as if (instead of requiring the detention to be authorised by both an officer of a rank above that of inspector in the arresting force and an officer of a rank above that of inspector in the investigating force) it required the detention to be authorised by an officer of Revenue and Customs of a grade above that equivalent to the rank of inspector;

(c) subsection (3) is omitted;

(d) in subsections (4) and (5), the reference to an officer of the investigating force is to be read as a reference to an officer of Revenue and Customs;

(e) in subsection (6), the reference to an appropriate officer in the investigating force is to be read as a reference to an appropriate officer of Revenue and Customs (as defined by subsection (7));

(f) subsection (6)(a) is omitted;

(g) in subsection (7)(b), the reference to an officer of at least the rank of inspector is to be read as a reference to an officer of Revenue and Customs of at least the equivalent grade;

(h) in subsection (7)(c), the reference to an officer of a rank above that of inspector is to be read as a reference to an officer of Revenue and Customs of above the equivalent grade;

(i) subsections (8) to (10) are omitted.

(2B) Where section 137C applies in accordance with subsection (2A), Schedule 7B applies with the following modifications—

(a) any reference to a constable in the arresting force is to be read as a reference to an officer of Revenue and Customs;

(b) any reference to an officer of at least, or above, a particular rank in the investigating force is to be read as a reference to an officer of Revenue and Customs of at least, or above, the equivalent grade;

(c) any reference to the arresting force or to the investigating force (otherwise than in relation to a description of officer in the force) is to be read as a reference to officers of Revenue and Customs;

(d) instead of the modification made by paragraph 9, section 42 of the Criminal Justice (Scotland) Act 2016 is to be read as if the references in subsections (1)(c)(ii) and (3)(b) to the police were references to officers of Revenue and Customs;

(e) the Schedule is to be read as if it also provided for references in the provisions applied by section 137D(2)(d), (3)(d) and (4)(d) to a police station to include references to an office of Revenue and Customs.

(2C) In the application of section 137C where a person is arrested under section 137A by an officer of Revenue and Customs in respect of a specified offence other than one that is being investigated by an officer of Revenue and Customs—

(a) any reference to an officer of at least, or above, the rank of inspector in the arresting force is to be read as a reference to an officer of Revenue and Customs of at least, or above, the equivalent grade;

(b) the reference in subsection (6)(a) to the arresting force is to be read as a reference to any officer of Revenue and Customs.

(2D) Where section 137C applies in accordance with subsection (2C), Schedule 7B applies with the following modifications—

(a) any reference to a constable in the arresting force is to be read as a reference to an officer of Revenue and Customs;

(b) any reference to the arresting force (otherwise than in relation to a description of officer in the force) is to be read as a reference to officers of Revenue and Customs;

(c) instead of the modification made by paragraph 9, section 42 of the Criminal Justice (Scotland) Act 2016 is to be read as if the references in subsections (1)(c)(ii) and (3)(b) to the police were references to officers of Revenue and Customs;

(d) the Schedule is to be read as if it also provided for references in the provisions applied by section 137D(2)(d), (3)(d) and (4)(d) to a police station to include references to an office of Revenue and Customs."""

154: Schedule 17, page 351, line 29, leave out paragraph 10

155: Schedule 17, page 351, line 34, at end insert—

"(1) In Schedule 21 to the Crime and Courts Act 2013 (powers of immigration officers), Part 2 (modification of applied enactments) is amended as follows.

(2) In paragraph 41, for "Paragraphs 42 and 43" substitute "Paragraphs 42 to 43".

(3) After paragraph 42 insert—

"42A(1) This paragraph has effect in relation to the application of section 137C of the 1994 Act where a person is arrested under section 137A by an immigration officer in respect of a specified offence that is being investigated by an immigration officer.

_(2) Subsection (2)(b) is to be read as if (instead of requiring the detention to be authorised by both an officer of at least the rank of inspector in the arresting force and an officer of at least the rank of inspector in the investigating force) it required the detention to be authorised by an immigration officer of at least the grade equivalent to the rank of inspector.

_(3) Subsection (2)(c) is to be read as if (instead of requiring the detention to be authorised by both an officer of a rank above that of inspector in the arresting force and an officer of a rank above that of inspector in the investigating force) it required the detention to be authorised by an immigration officer of a grade above that equivalent to the rank of inspector.

_(4) Subsection (3) is omitted.

_(5) In subsections (4) and (5), the reference to an officer of the investigating force is to be read as a reference to an officer of Revenue and Customs.

_(6) In subsection (6), the reference to an appropriate officer in the investigating force is to be read as a reference to an appropriate immigration officer (as defined by subsection (7)).

_(7) Subsection (6)(a) is omitted.

_(8) In subsection (7)—

(a) in paragraph (b), the reference to an officer of at least the rank of inspector is a reference to an immigration officer of at least the equivalent grade;

(b) in paragraph (c), the reference to an officer of a rank above that of inspector is to be read as a reference to an immigration officer of above the equivalent grade.

_(9) Subsections (8) to (10) are omitted.

42B(1) Where section 137C applies in accordance with paragraph 42A, Schedule 7B applies with the following modifications.

_(2) Any reference to a constable in the arresting force is to be read as a reference to an immigration officer.

_(3) Any reference to an officer of at least, or above, the rank of inspector in the investigating force is to be read as a reference to an immigration officer who is at least, or above, the equivalent grade.

_(4) Any reference to the arresting force or to the investigating force (otherwise than in relation to a description of officer in the force) is to be read as a reference to immigration officers.

_(5) Instead of the modification made by paragraph 9, section 42 of the Criminal Justice (Scotland) Act 2016 is to be read as if the references in subsections (1)(c)(ii) and (3)(b) to the police were references to immigration officers.

42C(1) This paragraph has effect in relation to the application of section 137C of the 1994 Act where a person is arrested under section 137A by an immigration officer in respect of a specified offence other than one that is being investigated by an immigration officer.

_(2) Any reference to an officer of at least, or above, the rank of inspector in the arresting force is to be read as a reference to an immigration officer of at least, or above, the equivalent grade.

_(3) The reference in subsection (6)(a) to the arresting force is to be read as a reference to any immigration officer.

42D(1) Where section 137C applies in accordance with paragraph 42C, Schedule 7B applies with the following modifications.

_(2) Any reference to a constable in the arresting force is to be read as a reference to an immigration officer.

_(3) Any reference to the arresting force (otherwise than in relation to a description of officer in the force) is to be read as a reference to immigration officers.

_(4) Instead of the modification made by paragraph 9, section 42 of the Criminal Justice (Scotland) Act 2016 is to be read as if the references in subsections (1)(c)(ii) and (3)(b) to the police were references to immigration officers."""

Amendments 151 to 155 agreed.

Amendment 156

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

156: After Clause 109, insert the following new Clause—

"Deputy Mayor for Policing and Crime as member of local authority

(1) Section 1 of the Local Government and Housing Act 1989 (disqualification and political restriction of certain local authority officers and staff) is amended as follows.

(2) In subsection (9) (references to a person holding a politically restricted post under a local authority include every member of the staff of an elected local policing body) omit ", except for a deputy police and crime commissioner".

(3) After that subsection insert—

"(10) The reference in subsection (9) to every member of the staff of an elected local policing body does not include a deputy police and crime commissioner.

(11) For the purposes of subsection (1) only, the reference in subsection (9) to every member of the staff of an elected local policing body does not include the Deputy Mayor for Policing and Crime appointed under section 19(1)(a) of the Police Reform and Social Responsibility Act 2011.""

Amendment 156 agreed.

Amendment 157

Moved by ***Lord Rosser***

157: After Clause 110, insert the following new Clause—

"Police and crime commissioners: parity of funding at inquests

(1) Where the police force for which a police and crime commissioner is responsible is an interested person for the purposes of an inquest into—

(a) the death of a member of an individual family, or

(b) the deaths of members of a group of families,

under the Coroners and Justice Act 2009, the commissioner has the duties set out in this section.

(2) The police and crime commissioner must make recommendations to the Secretary of State as to whether the individual family or the group of families at the inquest require financial support to ensure parity of legal representation between parties to the inquest.

(3) If a police and crime commissioner makes a recommendation for financial support under subsection (2), then the Secretary of State must provide financial assistance to the individual family or the group of families to ensure parity of funding between the individual family or the group of families and the other party to the inquest.

(4) The individual family or the group of families may use funding authorised under this section solely for the purpose of funding legal representation at the inquest.

(5) In this section, "interested person" has the same meaning as in section 47 of the Coroners and Justice Act 2009."

Lord Rosser: My Lords, the purpose of this amendment and its associated new clause is to establish the principle of parity of legal funding for bereaved families at inquests involving the police. Of course, we debated this in Committee.

The lack of such funding and the associated injustice was highlighted by the somewhat sorry saga of the Hillsborough hearings, and the extent to which the scales were weighted against the families of those who had lost their lives. Publicity was given to the issue because of the high-profile nature of the Hillsborough tragedy and the steps that were taken in its aftermath to pin the blame for what had happened on supporters at the game, perhaps in an attempt to cover up where responsibility really lay, and which emerged only years later.

The other week, according to the media, the coroner dealing with the first pre-inquest hearing into the 21 victims of the 1974 Birmingham pub bombings backed applications for their bereaved families to get legal funding for proper representation. He commended the application, said he did not have the power to authorise funds and commented that for those families who wanted to be legally represented, there was a compelling case for proper legal representation. However, inquests at which the police are legally represented are not confined to major tragedies such as Hillsborough; numerically, they are more likely to cover the death of a member of an individual family.

Many bereaved families can find themselves in an adversarial and aggressive environment when they go to an inquest. They are not in a position to match the spending of the police or other parts of the public sector when it comes to their own legal representation. Bereaved families have to try, if possible, to find their own money to have any sort of legal representation. Public money should pay to establish the truth. It is surely not right, and surely not justice, when bereaved families trying to find out the truth—and who have done nothing wrong—find that taxpayers' money is used by the other side, sometimes to paint a very different picture of events in a bid to destroy their credibility.

In the case of Hillsborough, the Lord Chief Justice made a specific ruling when he quashed the original inquest. He said he hoped that given that the police had tainted the evidence, the new inquest would not degenerate into an adversarial battle. However, that is precisely what happened. If there is to continue to be an adversarial battle at inquests involving the police, we should at least ensure that bereaved families have the same ability as the public sector to get their points and questions across—and frankly, in the light of what can currently happen, to defend themselves and their lost loved ones from attack and, if necessary, to challenge the very way in which proceedings are conducted. This is a bigger issue than simply Hillsborough, since it relates to the situation that all too often happens to many families but without the same publicity as Hillsborough.

In response in Committee, the Government accepted that all would sympathise with the intention of the amendment. They went on to say that the former Home Secretary had commissioned Bishop James Jones to compile a report on the experiences of the Hillsborough families, and that we should wait for his report before considering the issues further. Clearly, the coroner at the pre-inquest hearing into the 21 victims of the 1974 Birmingham pub bombings did not feel it necessary to wait for the Jones report before expressing his views on the application for funding for proper legal representation.

The Government were asked in Committee for clarity on the scope and terms of reference of Bishop Jones's inquiry and whether it would look not only at the circumstances where large numbers of families are potentially involved but at situations where one bereaved family may be traumatised by what has happened to the victim, and faces the full panoply of legal representation by a police force that is an interested person for the purposes of an inquest into the death of a member of an individual family. The Government replied that they would see and respond to Bishop Jones's review in due course, but added that he was still considering the terms of reference for his Hillsborough review with the families and intended to publish them shortly. That suggests that the outcome of the review is some way away and will be much orientated to Hillsborough, rather than to the issue of funding at inquests generally where the police are represented.

[LORD ROSSER]

In Committee, the Government also said that the amendment would place a significant financial burden on the Secretary of State. That may not necessarily be the case since the requirement for parity of funding, where the police are represented at taxpayers' expense, may lead to a harder look at the level and extent of representation required by a police force at an inquest, or indeed whether in some cases such legal representation is really needed at all. In any case, the lack of the terms of this amendment did not prevent the significant amount of funding that finally had to be provided in relation to Hillsborough—which I think the Government said amounted to £63.6 million. So even without this amendment, because of the way in which the situation was handled, that was apparently the amount that they ended up paying out.

The Government also raised what they themselves described as technical issues with the amendment, but accepted that those were detailed points and secondary—an acknowledgement, I suggest, that they could be addressed if necessary. We surely do not need further delay for the outcome of an inquiry where the terms of reference have apparently not even been finalised, where there is little likelihood of a speedy report and where the Government's commitment is only to consider the review in due course. Despite the Government saying in Committee that all would sympathise with the intention of the amendment, there is no commitment even in principle to address the issue of inequality in funding for bereaved families at any time, yet alone within a credible and realistic timescale that shows that this is a matter of some priority. I suggest that we need to act now to change a process and procedure that appears at times to be geared more to trying to grind down bereaved families than to enabling them to get at the truth and obtain a feeling that justice has been done. I beg to move.

Viscount Hailsham (Con): My Lords, I regret to say that I cannot support this proposed new clause, although I have a great deal of sympathy with the thinking behind it. I am quite sure that we should move to a situation where, in appropriate cases, there could be parity of funding. Where I differ from the noble Lord is in the suggestion in the proposed new clause that it should be the police commissioner who makes the recommendation. In my view, it should be the coroner. The truth is that we are dealing with a judicial process, and clearly some people will want to be represented, but whether or not what they have to contribute is relevant is something that only the person in charge of the judicial process can really determine, and that is the coroner. He alone can have a clear view of the issues and the relevance of the participation of the relevant parties. Also, we are really in the process of people making applications for funding that may themselves be resisted. There has to be a process whereby those submissions can be determined. It seems to me that that has to be the coroner.

I point out just two other considerations. I can conceive of circumstances in inquests where the police commissioner has a conflict of interest—either that he or she may be the subject of criticism in the course of the inquest, or that he or she might seek to take regulatory action against chief officers as a result of the inquest. That is a potential conflict of interest that we need to reflect upon.

Lastly, we need to entrust this process to an independent figure. The elected police commissioner is not an independent judicial figure; indeed, as he or she comes to the end of their elected term they may have every sort of personal reason to bump large wads of cash to people coming along to apply for it. It is not a happy situation. If the noble Lord, Lord Rosser, were to come forward with a proposal to the effect that the coroner should be in a position to make these recommendations, I would be happy to support it subject to any contrary argument. But as to the proposal that the police commissioner should trigger the recommendation, I absolutely cannot support it.

Lord Blair of Boughton: I support the noble Viscount, Lord Hailsham, on that point. However, given that this is Report, I ask the Minister to bring back a government amendment that says that it is the coroner. We should not lose this opportunity. I support the noble Lord, Lord Rosser, in saying that we ought to have a process in which there is an equality of arms between the two sides. As I understand it, however—I stand to be corrected—the House can do that only if the Government bring forward an amendment on Third Reading which says what the noble Lord's amendment does, but that it is not the police and crime commissioner; it is the coroner. I completely agree.

Lord Dear: My Lords, I can be very brief and agree entirely with the last two speakers. The sentiment behind the amendment is admirable, but the way it plays out needs regulation. I too strongly support the Government taking this away and bringing it back with the coroner in pride of place.

4.15 pm

Lord Hunt of Chesterton (Lab): My Lords, I support the amendment tabled by my noble friend. I speak as a scientist. I tabled a Question some eight or nine years ago about when there are scientific questions in a legal case and lots of money is spent by the Crown on some prosecution and little or zero money is available for the defence. It would be more appropriate, as in many civil cases, to have some sharing between the two sides of the nature of the scientific study and the interpretation of the data. When that does not happen—for example, it did not in the case of R v Sion Jenkins—you get serious miscarriages of justice and lots of money being spent: £10 million, I think, in that case. This amendment is very important.

Lord Mackay of Clashfern (Con): My Lords, many years ago the "Marchioness" inquiry had to have a second coroner's inquest. The parents of the people who had sadly lost their lives came to me and asked for legal aid, because there was no legal aid generally speaking in that situation. It was possible for me to authorise a fixed payment. In other words, I would decide how long their matter should last. Having had regard to the submissions made, I was able to fix an amount that defrayed the cost of the second inquest for the parents, which was extremely satisfactory.

A police force may be an interested party without being represented, but where it is represented, money should be available to the people affected on the other side. I agree that a judicial officer should decide that. The obvious judicial officer in this case is the coroner, who is already fixed with the ideas and matters likely to be litigated in the inquest. Therefore, if the noble Lord, Lord Rosser, was to go for the coroner instead of the elected police commissioner, that would be worth putting on the statute book now, subject to any argument we may yet hear from the Government. It is true that a considerable inquiry is already initiated, but it is primarily related to what happened at Hillsborough, which was a very special case. This is a much more general proposition. There is a good deal to be said for it. If the police want to save public money they should reduce their representation.

Lord Paddick: My Lords, I support the amendment proposed by the noble Lord, Lord Rosser, taking into account the contributions that have subsequently been made. I will reinforce some of the points I made in Committee and some of the points the noble Lord made.

Hillsborough was not unique. A more recent case I was a participant in was the inquest of Jean Charles de Menezes. Noble Lords will remember that Jean Charles de Menezes was accidentally killed by armed officers in 2005, having wrongly been identified as one of the suspects who had attempted to carry out a suicide bombing. I gave evidence for the family. I experienced first-hand the tactics deployed by some police counsel at inquests—a search for the truth turns into a bruising adversarial encounter. As I said in Committee, the coroner had to warn the police counsel over the aggressive tactics he was using in cross-examination.

As far as the family of the deceased is concerned, I do not believe there can be any argument. It cannot be right that the police can employ as large and as eminent a legal team as their considerable budgets will allow to represent them while the families of those who die at the hands of the police struggle to raise the funds to be represented at all, nor should it fall to public interest lawyers to have to provide pro bono representation. If the Government are looking for a low-cost or no-cost option, perhaps the police could be forced to divide whatever budget they decide to deploy at an inquest equally with the family of the deceased. Any death at the hands of the police is a tragedy, and it is as important for the police as it is for the family to ensure that the true facts emerge in order to reassure the public that the police have acted fairly and reasonably and to enable the police to counter those with a political agenda, who often accuse them of a cover-up and of having given a misleading account of what happened. Spending public money on establishing beyond doubt what happened when someone died at the hands of the police is worth every penny, and I believe the police themselves should fund both legal teams to the same extent.

I accept what the noble Viscount, Lord Hailsham, said about the issues with this amendment, and I accept what the noble Lords, Lord Blair of Boughton and Lord Dear, have said on this issue. Having served in your Lordships' House for only three years, I do not know whether I should dare say that my understanding is that, as we are on Report, it is only the Government who could bring forward an alternative amendment at Third Reading. If we are, as we should be, trying to establish the principle of equality of arms in an inquest situation, if this is the only amendment we can divide on and if the noble Lord, Lord Rosser, decides to divide the House, we will support him.

Lord Mackay of Clashfern: I think that if the Government agree that the matter can be reconsidered at Third Reading, it does not need to be a government amendment.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I do not doubt the sincerity of the intentions behind this amendment. The new clause comes directly from the experiences of the Hillsborough families, and anyone who has heard of their long fight for justice cannot fail to be moved. I entirely accept, however, that the issue raised by the amendment is of general application.

As noble Lords will be aware from the debate in Committee, the Government's position on this amendment is that we should wait for the report commissioned from Bishop James Jones on the experiences of the Hillsborough families. In commissioning the work, the then Home Secretary asked Bishop Jones,

"to ensure that the full perspective of those most affected by the Hillsborough disaster is not lost".—[*Official Report*, Commons, 27/4/16; col. 1436.]

The families will have numerous experiences, including views on legal representation, and this will be reflected in Bishop Jones's report, which he aims to publish next spring.

I entirely accept noble Lords' points about the coroner, and we will bring them to the attention of Bishop Jones, but I reiterate that it is appropriate that the Government have the opportunity to consider his conclusions and recommendations fully before deciding what action to take. It would therefore be premature to proceed with the amendment at this stage.

It must be right that any consideration of this amendment takes account of the financial implications. The cost of the legal representation for the 103 Hillsborough families at the fresh inquests amounted to £63.6 million. Clearly, the Hillsborough inquests were an exceptional case, but they provide at least an indication of the level of financial commitment such an amendment could imply. While it is the case that the Hillsborough families received public funding for their legal costs at the fresh inquest, it was a bespoke scheme, instituted due to the exceptional nature of the events that took place 27 years ago.

Recognising the exceptional nature of the Hillsborough inquests, it is also right that we look at other data. We cannot say for certain in how many inquests the police are named as an interested person. However, we know from the Independent Police Complaints Commission report *Deaths During or Following Police Contact: Statistics for England and Wales 2015/16* that in the last financial year, 200 persons died following contact with the police. All of those deaths would have been subject to an inquest. Of course, the financial

[Baroness Williams of Trafford]
implications of this amendment are but one of the matters noble Lords will wish to take into consideration, but we cannot be blind to the impact on the public purse.

However, I come back to my core objection to this amendment: that this is neither the time nor the place to pursue this matter. As I have said, the Government are firmly of the view that we should wait for Bishop Jones's report and then determine, in the light of that, the most appropriate way forward. I hope the noble Lord, Lord Rosser, will accept that this is the proper way to proceed and agree—

Lord Kerr of Kinlochard (CB): Before the Minister sits down, I would like to be quite clear. Is she rejecting the wise advice from the noble and learned Lord, Lord Mackay of Clashfern? Is she saying that this is not a point of principle but a point of public expenditure?

Baroness Williams of Trafford: I am not disagreeing with anything that noble Lords have said. I have said that, in the light of the review by Bishop Jones, this is not the time to press the amendment. I hope, on that note, that the noble Lord will withdraw his amendment.

Lord Rosser: I thank all noble Lords who have spoken in this debate and will just make one or two comments on what the Minister had to say in reply. What is recorded in *Hansard* is that,

"the former Home Secretary commissioned Bishop James Jones to compile a report on the experiences of the Hillsborough families".

It does not say there that he has been asked to compile a report on the much wider issue raised in this amendment. As far as the timescale is concerned, I can only repeat what the Government said in Committee not so long ago, on 2 November, which is that Bishop Jones has only reached the stage where:

"He is considering the terms of reference for his review with the families"—

presumably the Hillsborough families—

"and intends to publish them shortly".

He must be some way from that, if it is going to be a detailed report looking at the situation as a whole, rather than just the Hillsborough situation. Certainly, if there is a suggestion that he is going to publish something within a very few months, it would suggest very much that it is going to be concentrated on what happened at Hillsborough and the experience of the Hillsborough families, and not on the much wider issue covered in this amendment of representation for bereaved families at inquests generally where the police are legally represented. The issue of costs has been raised by the Government, which must raise some further doubts. I refer again to what the Government said on 2 November, which is that the Government wish to,

"put on record that these amendments would place a significant financial burden on the Secretary of State … The cost of the legal representation for the 103 families at the fresh inquest into Hillsborough amounted to £63.6 million".—[*Official Report*, 2/11/16; cols. 757-59.]

The Government incurred that cost without the terms of this amendment being in operation. But it is quite clear that cost is a major consideration as far as the Government are concerned, rather than the fundamental issue of principle—parity of funding—which is addressed in the amendment. We also of course have not had any commitment from the Government in principle to what is in this amendment, and there is a reference as well to it being considered in due course.

I will come on to the comments that were made. Because there has been no indication that we can bring this back at Third Reading, I believe that we are no longer in a position where we can come back then with an amendment to our amendment. But if the issue is that this should be decided by a coroner or through some sort of judicial decision, rather than by the police and crime commissioner, and if the Government were prepared to give a commitment to bring along an amendment of that nature, I am quite sure that we would support it. The issue for us is not whether it is the police and crime commissioner making the recommendation. The gut issue here is parity of support for bereaved families at inquests where the police are legally represented. Since I do not think I have had a sufficient response from the Government, I beg leave—

Lord Mackay of Clashfern: Before the noble Lord sits down, I draw attention to the fact that if in due course this amendment were passed in a form that specified the coroner, there would still be the question of the date on which it would come into force. It would certainly be possible for the Government, if they thought it right, to wait for Bishop Jones's report before bringing it into force. On the other hand, as we know, there are occasions on which, if the Government think they have good reason, they sometimes do not bring things that they have an option to postpone into effect at all. So it would certainly be possible to make it clear that that is what could happen here.

I hope the Government will agree that the noble Lord can bring this back without agreeing a commitment as to what should happen. It would be extremely wise for this House to have the chance to consider the amendment with the coroner in instead of the police and crime commissioner, and I hope my noble friend's discretion is sufficient to allow her to say that the Government would not object to the amendment being brought back. Ultimately it is the House rather than any party that decides whether or not an amendment can be brought back, but I hope we would not need to go into that kind of procedure here if the Government were kind enough to say that if the amendment came forward in the shape that I am suggesting, and which the noble Lord has made clear he would be happy with, it could be considered. That would not mean a commitment by the Government to accept such an amendment, but at least it could be considered at Third Reading.

Lord Rosser: I can only invite the Minister to say whether the Government will indicate that they accept that I can bring this matter back at Third Reading. Having heard the views of the House, I would certainly wish to do so in the kind of terms that the House has indicated might make the amendment more acceptable. But I do not think I can do that if I am not going to get any indication from the Minister that the Government

will accept that I can bring it back at Third Reading. I think I am seeing her shake her head, which I take it means that the Government will not accept it and indeed are not prepared to say anything that would enable me to bring it back. I believe that I have understood the Minister correctly, and in the light of that I really have no option but to seek to test the opinion of the House.

4.32 pm

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4.45 pm

Amendment 158 not moved.

Clause 111: Firearms Act 1968: meaning of "firearm" etc.

Amendment 159

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

159: Clause 111, page 132, line 22, leave out from "description" to end of line 24 and insert "which—

(a) is designed to discharge only a small plastic missile (whether or not it is also capable of discharging any other kind of missile), and

(b) is not capable of discharging a missile (of any kind) with kinetic energy at the muzzle of the weapon that exceeds the permitted level."

Baroness Williams of Trafford: My Lords, the government amendments in this group seek to improve the provisions in Part 6 of the Bill relating to firearms. Amendments 159 to 162 make four improvements to the definition of airsoft weapons, which are non-lethal and pose a low risk to public safety. These weapons are legitimately used to discharge pellets manufactured with plastics and are considered as safe for mock skirmishing activities. Amendment 159 responds to concerns raised with us that the current definition is too restrictive and has no realistic prospect of applying to many airsoft weapons, because those weapons could be used to discharge missiles other than these pellets. It amends the definition to refer to the original design of the weapon to discharge only a small plastic missile as defined in the exemption. However, as the then Firearms Consultative Committee found in 2002, airsoft darts, which have higher penetrative qualities, pose a higher risk of causing serious injury than pellets discharged at the same kinetic energy level. Amendment 160 sets out that only weapons designed to discharge small spherical plastic missiles will be considered to be airsoft weapons.

The amendments also take account of new evidence from forensic tests undertaken during the summer on the lethality of airsoft weapons which were used to discharge pellets of up to 8 millimetres in diameter at the maximum permitted kinetic energy levels. Amendment 161 therefore increases the maximum allowable diameter from the current maximum of 6 millimetres to 8 millimetres, in line with the forensic evidence. Amendment 162 makes a technical amendment to the definition of automatic fire airsoft weapons in relation to the permitted kinetic energy level of such weapons, to be consistent with Amendment 159. The Government are committed to legislation that has a proportionate impact. These amendments will allow legitimate businesses in the airsoft industry to continue operating while setting clear standards of compliance required to protect public safety.

Amendments 163 to 165 to Clause 112 amend the definition of an antique firearm in order to cover air weapons as well as weapons that use an ignition system. As currently drafted, the clause confers a new regulation-making power to specify antique firearms by reference to the obsolete cartridge that they are chambered to discharge, or their ignition system. The intention is to place existing guidance on antique firearms on a statutory footing to clarify the law on antique firearms and prevent abuse by criminals. Currently, it is not possible to include air weapons within the definition of an antique firearm as they do not have an ignition system.

Amendments 163 and 165 will ensure that the definition can cover any type of firearm by reference to its propulsion system which, technically, can apply to air weapons as well as ignition firearms. Amendment 164 limits this extension of the definition to England and Wales only, given that the regulation of air weapons is a devolved matter in Scotland.

I hope that Amendments 166 and 167 address the legitimate concern raised by my noble friend Lord Attlee in Committee about the potential impact of EU deactivation standards for deactivated weapons on collectors and the film industry, and the need for the UK to be able to retain more robust controls.

Clause 114 amends the Firearms (Amendment) Act 1988 to make it an offence to make a "defectively deactivated" weapon available for sale or as a gift, or to sell such a weapon or to give it as a gift, other than to a person or persons who are outside the European Union. This gives effect to the European Commission implementing regulation on deactivation standards, which came into force on 8 April 2016 to set the standard for deactivating firearms across the European Union. As currently drafted, the clause retains the link to the EU standards in primary legislation. Amendments 166 and 167 remove this and instead provide for the standards to be specified by the Secretary of State. While we remain members of the EU we are required to abide by the EU standards, but these amendments provide the flexibility to set our own higher standards in the future.

In these circumstances, the Government recognise that it would be inappropriate for our museums to be subject to the new offence when transferring or receiving firearms deactivated to previous standards. It is not our intention for museums licensed to hold firearms to incur additional costs in relation to already deactivated weapons to comply with new deactivation standards which are not directed at them. The risk that museums may have to destroy weapons which are part of our cultural heritage would be an unacceptable result of these provisions. Amendments 168 and 169 therefore provide for the exemption of museums licensed by the Home Office in relation to firearms to be able to transfer or receive weapons which were deactivated to UK standards before the EU directive came into force and until the Secretary of State sets new standards.

Amendment 169A responds to an amendment tabled by Geoffrey Clifton-Brown at Commons Report stage. It amends the law relating to the legitimate practice of lending and borrowing a rifle or shotgun for the purposes of hunting animals, shooting game or vermin, and shooting at artificial targets on private premises. Current legislation permits a firearm certificate holder to lend a rifle or shotgun to a non-certificate holder only if the occupier—or, where the relevant firearm is a rifle, the occupier's servant—is present on private land of which they are the occupier. The amendment allows a certificate holder to lend a firearm or shotgun on private premises, where they have the permission, in writing, of a person with the right to invite guests on to the premises for the purposes that I have already referred to. The effect of this amendment is that both certificate holders with the right to invite guests on to premises for shooting purposes, and other certificate holders with the written authorisation of such a person, will be able to lend a firearm to a non-certificate holder. The certificate holder providing the written authorisation will be able to set restrictions on either the lending certificate holder or the borrower if they wish.

Finally, Amendments 170 and 171 extend the application of the offence of possession of pyrotechnic articles at live music events to Wales as well as England. This follows consultation with the Welsh Government, who agree that this new offence does not relate to devolved matters.

There is also Amendment 169B in this group, but I will wait to hear what the noble Lord, Lord Rosser, has to say before responding. In the meantime, I beg to move.

Earl Attlee (Con): My Lords, I support these amendments, and I am particularly grateful for Amendments 166 to 169 and for the Minister's explanation. The Minister has done everything she possibly can to meet my concerns. Unfortunately, however, she has to react to EU legislation, and the current regime will still have serious effects on collectors and businesses. But there is nothing we can do about it—it is a matter for the EU. In Committee I mentioned the Minister's excellent officials, and I hope that she will encourage them to engage at EU level to try to get the EU to see that it ought to adopt our system of deactivation, which has worked so well for so many years. However, I am grateful to the Minister.

Baroness Mallalieu (Lab): My Lords, I too thank the Minister for introducing Amendment 169A on the lending of a firearm by someone who has a certificate. I am well aware that this has caused a great deal of confusion and uncertainty, and I very much hope that

[Baroness Mallalieu]
this clear amendment will receive publicity in both the farming and the sporting press, which will mean that that confusion goes. I declare an interest as president of the Countryside Alliance.

Lord Rosser: Before speaking to my Amendment 169B, I would like further clarification of government Amendment 169A and the extent to which the provisions are new or simply reiterate the existing position. I am grateful for the Minister's letter to me of 6 December, but the fact that I raise further points indicates that I do not necessarily feel that I have found the answers within that letter. I make these points simply to ascertain the answers to the questions I raise, nothing more than that.

On the face of it, this amendment appears to say that it is acceptable for a 17 year-old who does not hold a certificate to borrow a rifle or a shotgun on private premises from a lender who is aged 18 and may have had a certificate under the Act for presumably a very short period of time. It will be helpful to know if that is an accurate interpretation or whether it shows a misunderstanding on my part. If it is basically correct, what checks have to be carried out on the 17 year-old—or on any other person—to make sure that they are a suitable person to borrow a rifle or a shotgun when they themselves do not hold a certificate under the Act? How will it be known whether they have, for example, a criminal record containing offences of violence or even illegal possession of a weapon? What check will there be on that, and who will undertake it before such a person is allowed to borrow a weapon? Will it be acceptable for a person with a criminal record to be able to borrow a rifle or a shotgun under the terms of this amendment or is that precluded anyway under the lender's certificate, to which reference is made in the amendment?

The amendment states that the borrower must be in the presence of the lender during the period for which the rifle or shotgun is borrowed. As a serious question, is that literally the case, including—to put it bluntly—if they want to go to the toilet? Does,

"in the presence of the lender",

mean that the borrower must at all times be within the sight of the lender? What will be the penalties if a rifle or shotgun is lent and the conditions referred to in the amendment are not adhered to, and if those conditions are breached, is there any statutory requirement to report such a breach to the police or any other authority?

I would be grateful for responses to those questions, and if they cannot be provided today, obviously it will be perfectly acceptable for them to be given in correspondence subsequently. It may be that I have so misunderstood the situation that there is a one-sentence answer to the points I have raised anyway.

On my amendment, which we discussed in Committee, the issue we raised was that the cost to the police of firearms licencing was much greater than the income coming in from the licence, which effectively meant that the issuing of such licences was being subsidised. The Government spoke in terms of being able to look at this issue following the introduction of the police's online system for handling applications for civilian firearm and shotgun certificates. In Committee, I asked when the online system would be introduced, whether it would lead to the police recovering the full costs of their role in administering applications and whether the fees would be increased in the interim to cover the costs now being incurred. The Minister very kindly undertook to write to me and I thank her for the letter which I subsequently received. The letter states that the fees have now been set at a level that will enable the police to recover the costs of firearms licensing once an online system is in place. Therefore, I ask the Minister to confirm for the record in *Hansard* that, once the online system is in place, there will be no further subsidising by the taxpayer of the cost to the police of firearms licensing and that the fees will be set at a level that will enable the police to recover the full costs of their role in administering applications.

5 pm

However, the difficulty with the letter is that it was somewhat vague on when the new online system would be introduced. In fact, no date or timescale was given; rather, there were references to producing an outline programme plan, including key deliverables and a cost estimate. I therefore ask again: when will the new online system be in operation?

The letter then went on to talk about the interim period and referred to planning to commence a review in the new year to consider the level of the fees and the progress of the implementation of online licensing. It did not say when the fees would be increased in the interim to make sure that existing costs incurred in handling applications for civilian firearm and shotgun certifications are fully covered and that there is no subsidising by the taxpayer of this activity.

As it is clear that the online system is some way away from being introduced, I therefore ask again when the Government are going to increase the fee for civilian firearm and shotgun certificates in the interim period, prior to the introduction of the online system, to a level that enables the police to recover the full costs of their role in administering applications and eliminates any apparent subsidy from the taxpayer. What is the problem with eliminating that subsidy now, and what is the justification for continuing with the apparent subsidy? Surely the answer is that there is none.

Viscount Hailsham: My Lords, I would like to make a declaration of interest, in that I hold a shotgun certificate and a firearm certificate, and to that extent I may be supposed to have a personal interest. Moreover, I have a declaration of personal responsibility to make too, in that after the Hungerford shooting way back at the end of the 1980s I was the Minister in the Home Office—subject, of course, to Douglas Hurd, now Lord Hurd of Westwell—responsible for the carriage of the firearms Act in 1988. I also have a long-standing interest in the law relating to firearms.

I am broadly in favour of Amendment 169A. Indeed, it is a response to my former Parliamentary Private Secretary, Mr Geoffrey Clifton-Brown—and all credit to him for tabling it in the House of Commons. However, I have one reservation about proposed new subsection (1)(b) in the amendment, which states,

"in the case of a rifle, the borrower is aged 17 or over".

Contrary to what the noble Lord, Lord Rosser, said, I think that that threshold is far too high. I look back to my youth when I used to use a .22 carbine, shooting on the lawn under the very close supervision of my father, who was, I think, a fairly respectable Member of this House. We felt that there was nothing improper about that so long as the supervision was close. I think that the age 17 threshold is too high. Personally, I would rather see a lower one—14 or something close to it. I agree that there should be supervision but I do not agree with the threshold.

I am very much against Amendment 169B, which concerns the full recovery of costs. I think we need to keep in mind the basic proposition that if you give powers to officials, on occasion they will be abused. That is one of the great rules of politics. Therefore, one needs to watch very carefully the powers you give officials.

In Lincolnshire, the chief officer pursues a sensible firearms policy. However, I am conscious that there are forces not too distant from Lincolnshire in which the firearms officers are fairly aggressive, driving up the cost. You should have a restriction of the reasonable cost, not the full cost, because it is possible for chief officers and firearms officers, through an overaggressive use of their investigatory and inspection powers, to drive the cost up, either because they want to deter firearms use or simply because they have a fairly aggressive approach. Therefore, my strong preference is that the limit be confined to a reasonable cost and not the full cost.

In acknowledging my own failings in 1987, I will go a little wider. There are three areas relating to the possession of firearms to which I hope my noble friend will give consideration in the future—or perhaps even in this Bill. First, what happens when your guest leaves by accident his or her gun in your house? This has happened to me. One of my guests, a Member of your Lordships' House, was shooting with me in Scotland and he managed to leave his shotgun accidently when he went a long way south, 200 or 300 miles away. The gun was in the gun cabinet and perfectly locked up, but the estate owner was not certificated to hold it. I asked myself whether I should take it down to him. I was not certificated to transport it. What does one do? I am not going to tell you what I did for obvious enforcement reasons, but it is a dilemma. What is the law where a gun is accidently left behind but is secure in a gun case? We need to have provision to cover such a situation.

Secondly, and rather similarly, if you go shooting some distance from your home you take your gun in the car. You travel along the motorway—no doubt with your wife or your partner—and when you stop at a service station, for obvious reasons, you leave your gun, generally speaking, in the car, with your wife in the car looking after it. However, in the normal run of events, she is not certificated. In my case I have taken precautions in that regard, but your wife or partner in the car is in possession of a gun for which she is not certificated. That is potentially an offence.

My final point—I am sorry to trespass on your Lordships' patience—relates to the keys of gun cases. Some of your Lordships may know of the unfortunate case where a lady admitted to a police officer that she knew where the keys to the gun case were, and she was done for being in possession of the gun. That is a complete nonsense. I did not tackle these problems when I was the Minister in charge of this issue, but I like to think that my noble friend will be more sensible than I was.

In the old days, enforcement of gun laws was fairly relaxed. The chief officer would know that so and so was a reliable citizen. However, that is not the case now—probably rightly—and what I have described can give rise to serious sanctions and penalties. That alarms me. I like to think that my noble friend on the Front Bench will reflect on my shortcomings as the Minister responsible for the 1987 Act and perhaps remedy the deficiencies.

Lord Paddick: My Lords, I support Amendment 169B in the names of the noble Lords, Lord Rosser and Lord Kennedy of Southwark.

I accept the point made by the noble Viscount, Lord Hailsham, about reasonable cost as opposed to full cost recovery—or, at least, I could accept it if it was an approach the Government took across the board. However, in Committee I drew a parallel with the Immigration Act, where the Government proposed a philosophy of full cost recovery for visa applications and for the Immigration Service generally. I asked the Minister then, if she was not going to agree with amendments tabled to ensure full cost recovery for the issuing of firearm certificates, to explain why a different approach is being taken to the principle of full cost recovery when it comes to immigration. In particular, I asked her to refute the obvious allegation that the Government are discriminating against foreign nationals as against those who go hunting with guns for sport. I cannot recall the Minister specifically responding to that question; perhaps she could address it today.

Having apparently agreed in Committee to the principle of full cost recovery for firearms certificates, the Minister went on to say that there was a public consultation on these issues and that,

"there might be good reasons not to set fees at full cost recovery levels, either for a transitional period or for certain categories of licence holder".—[*Official Report*, 9/11/16; col. 1163.]

There are very good reasons why visa applications and the like should not be set at full cost recovery levels, yet the Government appear determined that they should be, without any public consultation or a transitional period. Can the Minister explain why foreign nationals are being treated differently from those who possess firearms?

I asked the Minister in Committee what consultation there had been with groups that represent immigrants or those who might apply for visas before the Government implemented full cost recovery for immigration visas. Can the Minister please answer that question for the record, as she was unable to do so in Committee?

Baroness Williams of Trafford: My Lords, perhaps I may first deal with some of the questions that have arisen out of Amendment 169A. Both the noble Lord, Lord Rosser, and my noble friend Lord Hailsham asked about the age threshold of 17—the noble Lord, Lord Rosser, probably thought that it was too low and

[Baroness Williams of Trafford]
the noble Viscount, Lord Hailsham, thought it too high. The age of 17 or over for borrowing rifles reflects the current position under Section 16 of the Firearms (Amendment) Act 1988—which the noble Viscount may have taken through Parliament himself.

The noble Viscount asked about firearms accidentally left in someone's house. I understood that if you held a firearms licence yourself, it was okay for someone to leave something in your house, but I am not certain on that point so I will write to him.

The noble Lord, Lord Rosser, asked whether the provisions were new. The answer is both yes and no, because they amend current legislation. After careful consideration, we have decided to clarify and align the existing provisions for the borrowing of a rifle or shotgun to practise the hunting of animals and the shooting of game or vermin on private land. He also asked whether individuals with a qualifying criminal record are prohibited from possessing a firearm under Section 21 of the 1968 Act. It is for the lender to satisfy himself or herself that a borrower does not have a relevant criminal record when he or she is lending them a firearm.

The lender would have to be present. If the borrower needed to go to the toilet, for example, they would have to leave the certificate-holder with the weapon while they went to the loo.

I will just respond to Amendment 169B from the noble Lord, Lord Rosser. The Government agreed that fees for firearm certificates should be set on a cost recovery basis. I am happy to confirm, as I did in my letter to the noble Lord, that the cost of these certificates is expected to reflect the full cost of licensing once a new, more cost-effective online licensing system is in place. We already increased the fees for civilian firearm certificates in line with this objective, and Clause 117 allows us to set fees for licences issued by the Home Office and the Scottish Government. As I think I said in Committee, this will save the taxpayer around £700,000 a year.

5.15 pm

As I also think I said in Committee, work is under way on the new system, managed by the police ICT company in conjunction with police forces. I recognise that the noble Lord would like greater certainty about when the new online system will be in place and what will happen in the interim. I share his frustration regarding the progress made with the development of the online licensing system. Accordingly, the Policing Minister will write to the national policing lead for firearms for an update on progress.

However, I am able to offer greater clarity on the timing of the next review of police firearms fees, which will commence in the new year and consider both the levels of fees and the progress made in implementing online licensing. In addition, we will review the current firearms licensing IT system to ensure that it continues to meet the operational needs of policing until a new capability is delivered. I will keep the noble Lord—and other noble Lords—updated as this work progresses.

To answer the question of the noble Lord, Lord Paddick, the Government's position is that all fees should be set on the basis of full cost recovery, as set out in Treasury guidance. There is therefore no discrimination against any particular category of fee payers. I hope with those words of explanation—

Viscount Hailsham: My noble friend was good enough to say she would write to me and I am grateful. Would she include in her letter a response on what I would summarise as the service station point, and the point about when one's wife or partner knows the whereabouts of the key to the gun safe?

Baroness Williams of Trafford: I certainly will. I would be very careful before going to my noble friend's house, given the guns and their placement in various cars and things. I hope Viscountess Hailsham will be careful, too. I will certainly write to my noble friend on all those points.

Lord Rosser: I am sure the Minister's response was clear but I did not hear it properly: did she say that the Policing Minister would write on a particular issue concerning firearms? If so, could she repeat that as I am afraid I did not pick it up?

Baroness Williams of Trafford: I just pointed out that we are both frustrated about this matter and that the Policing Minister will write to the national policing lead for firearms for an update on progress.

Amendment 159 agreed.

Amendments 160 to 162

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

160: Clause 111, page 132, line 26, at end insert—

"(aa) is spherical, and"

161: Clause 111, page 132, line 27, leave out "6" and insert "8"

162: Clause 111, page 132, line 29, leave out from "which" to "successively" in line 30 and insert "is capable of discharging two or more missiles"

Amendments 160 to 162 agreed.

Clause 112: Firearms Act 1968: meaning of "antique firearm"

Amendments 163 to 165

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

163: Clause 112, page 133, line 25, leave out "ignition" and insert "propulsion"

164: Clause 112, page 133, line 35, at end insert—

"(2DA) In its application to Scotland, subsection (2C) does not apply in relation to a firearm that is an air weapon."

165: Clause 112, page 133, line 45, leave out "ignition" and insert "propulsion"

Amendments 163 to 165 agreed.

Clause 114: Controls on defectively deactivated weapons

Amendments 166 to 169

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

166: Clause 114, page 135, leave out line 35 and insert "technical specifications for the deactivation of the weapon that apply at the time when the weapon is made available for sale or as a gift or (as the case may be) when it is sold or given as a gift.

(4A) The Secretary of State must publish a document setting out the technical specifications that apply for the purposes of subsection (4)(c) ("the technical specifications document").

(4B) The technical specifications document may set out different technical specifications for different kinds of weapon.

(4C) The Secretary of State—

(a) may from time to time revise the technical specifications document, and

(b) where it is revised—

(i) must publish the document as revised, and

(ii) specify in it the date on which any changes to the technical specifications that apply for the purposes of subsection (4)(c) take effect."

167: Clause 114, page 135, leave out lines 36 to 40

168: Clause 114, page 135, line 40, at end insert—

"(5A) In the case of a weapon rendered incapable as mentioned in subsection (4)(b) before 8 April 2016, subsection (1)(a) or (b) does not apply if the weapon is made available for sale or as a gift, or (as the case may be) sold or given, by or on behalf of a museum in respect of which a museum firearms licence is in force to another museum in respect of which such a licence is in force."

169: Clause 114, page 135, line 42, at end insert—

"(6A) In this section, "museum firearms licence" means a licence granted under the Schedule to the Firearms (Amendment) Act 1988."

Amendments 166 to 169 agreed.

Amendment 169A

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

169A: After Clause 115, insert the following new Clause—

"Authorised lending and possession of firearms for hunting etc

(1) After section 11 of the Firearms Act 1968 insert—

"11A Authorised lending and possession of firearms for hunting etc

(1) A person ("the borrower") may, without holding a certificate under this Act, borrow a rifle or shot gun from another person on private premises ("the lender") and have the rifle or shot gun in his or her possession on those premises if—

(a) the four conditions set out in subsections (2) to (5) are met, and

(b) in the case of a rifle, the borrower is aged 17 or over.

(2) The first condition is that the borrowing and possession of the rifle or shot gun are for either or both of the following purposes—

(a) hunting animals or shooting game or vermin;

(b) shooting at artificial targets.

(3) The second condition is that the lender—

(a) is aged 18 or over,

(b) holds a certificate under this Act in respect of the rifle or shot gun, and

(c) is either—

(i) a person who has a right to allow others to enter the premises for the purposes of hunting animals or shooting game or vermin, or

(ii) a person who is authorised in writing by a person mentioned in sub-paragraph (i) to lend the rifle or shot gun on the premises (whether generally or to persons specified in the authorisation who include the borrower).

(4) The third condition is that the borrower's possession and use of the rifle or shot gun complies with any conditions as to those matters specified in the lender's certificate under this Act.

(5) The fourth condition is that, during the period for which the rifle or shot gun is borrowed, the borrower is in the presence of the lender or—

(a) where a rifle is borrowed, a person who, although not the lender, is aged 18 or over, holds a certificate under this Act in respect of that rifle and is a person described in subsection (3)(c)(i) or (ii);

(b) where a shot gun is borrowed, a person who, although not the lender, is aged 18 or over, holds a certificate under this Act in respect of that shot gun or another shot gun and is a person described in subsection (3)(c)(i) or (ii).

(6) Where a rifle is borrowed on any premises in reliance on subsection (1), the borrower may, without holding a firearm certificate, purchase or acquire ammunition on the premises, and have the ammunition in his or her possession on those premises for the period for which the firearm is borrowed, if—

(a) the ammunition is for use with the firearm,

(b) the lender's firearm certificate authorises the lender to have in his or her possession during that period ammunition of a quantity not less than that purchased or acquired by, and in the possession of, the borrower, and

(c) the borrower's possession and use of the ammunition complies with any conditions as to those matters specified in the certificate."

(2) In consequence of the amendment made by subsection (1), omit the following—

(a) section 11(5) of the Firearms Act 1968;

(b) section 16 of the Firearms (Amendment) Act 1988."

Amendment 169A agreed.

Amendment 169B not moved.

Clause 119: Possession of pyrotechnic articles at musical events

Amendments 170 and 171

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

170: Clause 119, page 139, line 16, leave out "in England"

171: Clause 119, page 139, line 17, leave out "in England"

Amendments 170 and 171 agreed.

Clause 120: Meaning of "alcohol": inclusion of alcohol in any state

Amendment 171A

Moved by ***Lord Brooke of Alverthorpe***

171A: Clause 120, page 140, line 6, at end insert—

"( ) In that Act, after section 191(1)(i) insert—

"(j) powdered or vaping alcohol."

( ) In the Misuse of Drugs Act 1971, in Schedule 2 (controlled drugs), Part III (class C drugs), after paragraph 1(e) insert—

"(f) powdered or vaping alcohol.""

Lord Brooke of Alverthorpe (Lab): My Lords, in Committee I endeavoured to remove the Government's redefinition of "alcohol" in the Licensing Act 2003 to cover alcohol "in any state". I was worried that that covered powdered and vaping alcohol and I sought to remove them from the redefinition. The Minister argued that we really needed to establish the legal status of powdered and vaping alcohol and that if my amendment was accepted, it would have left us still in an unclear position about the legal status of those products, and we needed clarity. I accepted her argument and suggested that the difficulty might be overcome if we decided to class powdered or vaping alcohol as class C substances under the Misuse of Drugs Act 1971 or prohibit their production, supply, import or export by an amendment to the Psychoactive Substances Act 2016. Either course of action would resolve the legal status and leave beyond any doubt where these two substances stood. Accordingly, I asked the Minister to remove Clause 117, which sought to cover alcohol in all forms, but she was not prepared to do that at that stage.

Today I have returned to the subject and have tabled an amendment which would no longer allow powdered or vaping alcohol to be classed under the 2003 Act; instead, they would fall under the Misuse of Drugs Act 1971. I will not repeat all the arguments I made at Second Reading and in Committee, in the light of what has been happening in America, where the number of states that have banned these substances has gone up from the 26 I mentioned when we discussed this subject previously to 32. Of particular interest is that they have now been banned in California. Governor Jerry Brown signed a Bill into law on 28 September. Of course, this is a state which on 8 November voted to legalise recreational marijuana. So California is prepared to legalise marijuana but will not permit powdered alcohol to be sold in the way that our Government will permit, if this clause remains.

How have we got to this position? As I understand it, there was a consultation in the summer in which the Home Office spoke primarily to representatives of the drinks industry, it pondered what it should do with these technological developments as they come along, and it was decided that it was better that they should be legalised for sale. For all the reasons I have advanced previously—you can take powdered alcohol anywhere, you can mix it with existing drinks, you can take it into prisons very easily, and so on—I urge the Government to think again before they move forward in this way. I ask the Minister to consider accepting the solution that the noble Baroness, Lady Finlay, and I are offering. It is straightforward and very much in line with what is happening in the States and elsewhere.

Given all the problems we have with liquid alcohol and with drugs in prison, it is quite wrong to be legalising the sale of these substances. I believe the public would share that view. If they knew what we were debating today, they would be absolutely outraged that we are about to legalise these substances so that in due course people can be vaping alcohol and using the powder. In the hope that I have been as reasonable as I could be in trying to see the Minister's point of view and have endeavoured to help her as best I can, I beg to move.

Baroness Finlay of Llandaff (CB): My Lords, it might help the House if I explain why the noble Lord, Lord Brooke, and I view this as quite such a dangerous substance and why it is quite different from alcohol in a liquid form, which one drinks. The reason is that powdered alcohol can be snorted, as can vaping alcohol. The problem is that it is then absorbed through the sinuses, directly through the blood-brain barrier, so that you get an immediate hit. You can get a very high hit in the brain with a very low blood-alcohol level because it has a direct route. If you drink a drink, as many of your Lordships probably will this evening, you will absorb it through the gut and it will go through the liver, where an enzyme called alcohol dehydrogenase partly metabolises it—it burns it up. It then goes into your bloodstream and then to your brain, so the amount getting to your brain will be reflected in a peripheral blood sample, which is where blood-alcohol levels are measured for driving and so on.

However, this powdered or vaping mechanism completely bypasses that. The problem is also that it is extremely difficult to detect, but the rapid high is much higher and faster than one would get even with a schnapps-type drink that might be downed quickly. That effect is particularly dangerous. In an important study done in the US, more than 1,800 undergraduate students were interviewed and 23% indicated that they would use the product if available. Of those, 62%—that is, just about two-thirds—also indicated a likelihood of misusing the product; that misuse was higher among Caucasian students and those who were already hazardous drinkers, who were significantly more likely to use it. We have tabled this amendment because we think this formulation is particularly dangerous and acts like a dangerous drug.

Lord Kennedy of Southwark (Lab): My Lords, as this is the first time I have spoken on Report, I should quickly declare that I am an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

The question of powdered or vaping alcohol was discussed in Committee, as my noble friend Lord Brooke of Alverthorpe mentioned, and his amendment would now classify it under the Misuse of Drugs Act. I must confess that I had never heard of powdered or vaporised alcohol before we debated this in Committee on 9 November. I have now of course heard that this alcohol can be put into fruit juice and other soft drinks; apparently, it can be baked and put into a

whole range of products. I also thought that vaping was an alternative to smoking and had no idea that you can now apparently vape alcohol. I think we all agree that alcohol is a mood-altering substance, so I hope that the Minister can respond to these important issues. I take entirely the medical evidence given by the noble Baroness, Lady Finlay, on how these products can get into your body and how quickly they can react. It is important that we look at this carefully and, if it needs to be regulated properly, at how that can be done.

5.30 pm

Baroness Chisholm of Owlpen: My Lords, I remind the House that Clause 120 amends the definition of alcohol in Section 191 of the Licensing Act 2003. The current definition of alcohol covers spirits, wine, beer, cider or any other fermented, distilled or spirituous liqueur. The clause adds "(in any state)" to the definition; the purpose of this is to ensure that all alcohol, no matter in which form it is sold, is covered by the requirements of the 2003 Act.

Amendment 171A seeks to exempt powdered and vaporised alcohol from the 2003 Act and instead to control it as a class C drug under the Misuse of Drugs Act 1971. Controlling powdered and vaporised alcohol as a class C drug would, in effect, prohibit the possession, production and distribution of these forms of alcohol.

Alcohol is a legal substance and the Government's approach is to minimise the harm caused by alcohol by regulating its sale and supply. The 2003 Act seeks to reduce harm through promotion of the licensing objectives. These are: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The 2003 Act also contains a number of criminal offences, including selling alcohol to a child under the age of 18 and selling alcohol without a licence.

The Government believe that the focus on the four licensing objectives provides sufficient safeguards for the sale of alcohol. It would be contradictory and disproportionate to regulate the sale of liquid alcohol but make alcohol illegal when it is provided in another form, such as powder or vapour. The classification of harmful drugs in the 1971 Act is predicated on an assessment of their respective harms and in accordance with recommendations made by the Advisory Council on the Misuse of Drugs. The 1971 Act places a duty on the Secretary of State to consult the advisory council before bringing a substance within the controls provided for in that Act.

Quite apart from questions over the merits or otherwise of controlling powdered and vaping alcohol in this way, the absence of such a consultation having been carried out means it would be inappropriate to amend the 1971 Act in the manner proposed by this amendment. The Government are not aware of any evidence that the harms posed by powdered and vaporised alcohol are such that it is necessary to consider controlling it as an illegal drug. Powdered and vaporised alcohol are not substances of which the misuse is having or capable of having harmful effects sufficient to constitute a social problem, as is the test under the 1971 Act. Unless and until there is evidence to suggest that these forms of alcohol are meeting that test, I believe that a regulatory approach is the appropriate one.

Clause 120 will ensure that the four licensing objectives continue to be met despite innovations in alcohol products and that the public, especially children, continue to be protected from irresponsible sales of alcohol. On that basis, I would ask the noble Lord to withdraw his amendment.

Baroness Finlay of Llandaff: Before the noble Baroness sits down, will she undertake to ask the ACMD to put this issue on its agenda and keep a watchful eye on it in the future? I declare an interest in that I was a member of the ACMD when khat was being looked at.

Baroness Chisholm of Owlpen: I thank the noble Baroness for that question. Home Office officials have discussed powdered alcohol with the Department of Health and Public Health England and are very much keeping it under review. They may well have to do things at a later date but, for now, they are just keeping a watchful eye on it.

Lord Brooke of Alverthorpe: I am grateful to the noble Baroness, Lady Finlay, for her support and expertise, and to my noble friend Lord Kennedy for weighing in from my Front Bench with support for the amendment. As noble Lords might expect, I am disappointed with the Minister's response. The Government have consulted —they consulted the drinks industry—but if they had consulted over a wider area, and particularly the committee to which the noble Baroness, Lady Finlay, referred, I think they might have got an entirely different view in reaching their judgment on this classification.

I know quite a lot about the four objectives that govern the Licensing Act and, quite frankly, they are totally inappropriate in trying to deal with this. They were drawn up in the context of liquid alcohol, and there was a list of all the forms in which it is produced, but this is quite different. This is a move in an entirely different direction. I feel that, rather than take a serious look at this, the Government are simply applying the existing legislation as best they can, but they will not be able to implement it.

I will take the Minister's arguments away, have a look at them and decide whether to come back again at Third Reading. I beg leave to withdraw the amendment.

Amendment 171A withdrawn.

Amendment 172

Moved by ***Lord Clement-Jones***

172: After Clause 126, insert the following new Clause—

"General duties of licensing authorities

(1) Section 4 of the Licensing Act 2003 (general duties of licensing authorities) is amended as follows.

(2) After subsection (2)(d) insert—

"(e) the provision of social or cultural activities.""

Lord Clement-Jones (LD): My Lords, Amendment 172 would create a fifth licensing objective that licensing authorities must promote when discharging their functions. It would secure the provision of social or cultural activities as a general duty. It follows the similar Amendment 214A from Committee.

[Lord Clement-Jones]

There is a very strong case to be made that activities such as live music should be completely deregulated from the Licensing Act. Other legislation, such as the Environmental Protection Act 1990, the Regulatory Reform (Fire Safety) Order 2005, the Health and Safety at Work etc. Act 1974, and the Anti-social Behaviour Act 2003 contain a great many of the protections in law that form the basis for conditions relating to live music that may be imposed by the Licensing Act on a premises licence. The Licensing Act therefore presents a tier of legislative duplication that is in many respects unnecessary, given that live events can be controlled by other means.

Despite this compelling argument, the Government have not been minded to deregulate further than audience sizes of 500—a level that builds on the Live Music Act I took through Parliament. In the meantime, there has been a continuing decline in live music venues. As the noble Earl, Lord Clancarty, rightly said in Committee:

"There has in recent years been a perfect storm of circumstance for our night-time economy. Rising rents and business rates, property developments, noise complaints, complaints about anti-social behaviour and more have conspired to devastate our night-time cultural landscape".—[*Official Report*, 9/11/16; col. 1212.]

In these circumstances we need to amend licensing objectives in particular to help these venues survive. Current objectives relate to crime and disorder, public safety, public nuisance and protection of children. Mark Davyd of the Music Venue Trust said:

"Licensing is just one of many areas of the legal framework around grassroots music venues that is contributing to their rapid decline".

As the chief operating officer of Live Nation said:

"Unfortunately not all local authorities are like-minded and their interpretations of the Licensing Act are not always helpful, or consistent, which is frustrating and creates obstacles for venue operators at all levels".

The amendment is designed to introduce a new objective in the local authority decision-making process that would take account of the positive cultural impact of staging an event. At present, authorities are not obliged to consider the wider benefits of music and entertainment in the community, and instead focus on the negative impact of applications. The noble Lord, Lord Kennedy, said in Committee, that,

"music and other activities should be helped and supported where possible through the licensing system, rather than just regulated".—[*Official Report*, 9/11/16; col. 1214.]

A proportionate approach from licensing authorities would be welcome when they handle applications or complaints relating to entertainment. That the four existing licensing objectives are completely predicated on preventive measures does nothing to help struggling venues that are already being hit by high business rates and new planning developments. Amendment 172 is therefore required to support the social or cultural impacts of an activity regulated by the Licensing Act.

I have of course read the Minister's response of 9 November and taken account of what she said. Her argument was that it would be difficult to replicate the evidence of harm in the same way as for licence conditions that seek to protect against and reduce harm—a rather circular argument. She went on to say that a licensing objective of promoting cultural activity and inclusion is,

"quite a subjective matter and may be interpreted in different ways … Making this a licensing objective could place licensing authorities in a censorious position, whereby licensees organising events might be obliged to explain what additional cultural value their entertainment might generate, and the licensing authorities would be required to evaluate that information".—[*Official Report*, 9/11/16; col. 1216.]

This amendment is substantially different from the Committee stage amendment in two crucial respects. First, it is no longer limited to cultural matters and makes a much broader point about other activities that have social benefits that may need to be supported by a positive objective in the Licensing Act, too. This would deal with a legitimate criticism of the original amendment—that it would result in all premises having to provide cultural activities. That was not the intention of the original draft, but I accept that it could have led to it.

Secondly, the amendment relates to provision rather than the original amendment's attempt at "promotion". The specific call for promotion was regarded by the Minister as putting licensing authorities in a potentially censorious and subjective position, as I just mentioned. I should point out, however, that the current objectives, particularly the prevention of nuisance, are already interpreted subjectively and censoriously.

As is stands, the cultural activities of, say, a grass-roots music venue are not considered at all. Once gone, these venues will not come back into our towns and cities. There is a delicate balance that should be achieved by local authorities. Having this fifth objective might just be critical to a decision that will lead to their remaining open. The Minister's response in Committee was fairly cursory, and I look forward to a more detailed and substantive response to the amendment at this stage. I beg to move.

The Earl of Clancarty (CB): My Lords, I support Amendment 172, which has been excellently introduced by the noble Lord, Lord Clement-Jones. There needs to be a shift from authorities viewing our nightlife economy as something to be restricted to viewing it as something to be encouraged. Indeed, provision should be made. If London, to take just one example of cities across the UK, has lost 40% of its music venues in the past five years—not, it cannot be overemphasised, through lack of demand—there is something seriously awry with how our local communities are developing.

The licensing authorities need a better understanding of this landscape and to act constructively to counter this. As the noble Lord, Lord Clement-Jones, said, in her reply in Committee the Minister said that cultural activity is "quite a subjective matter". However, there is nothing in the amendment submitted in Committee or in this amendment about which cultural events should take place. The amendment is not in any way prescriptive; nor is there any sense of a limit to be placed on cultural events or of their particular value socially or culturally. The Minister talked of "a censorious position", but the fact is that there is already, to a significant degree, an implicit censoriousness—one might say a tunnel vision—in the treatment of our clubs and music venues by licensing authorities, and the amendment would address that.

In evidence given yesterday to the Select Committee on the Licensing Act 2003, Mark Davyd, chief executive of the Music Venue Trust, said, "We want to see

grass-roots music venues acknowledged and respected alongside theatres and art centres as spaces that are vital to the health, wealth and happiness of the UK". That is a laudable aim. It also means that comparable criteria for operation should be applied to all those venues, but that kind of parity can be achieved only if all these cultural activities are perceived in a positive sense and as being connected through the wider landscape. There needs to be a mechanism that achieves that. The licensing authority is, or should be, the meeting place of all the different stakeholders; it is the logical place for that to happen. I hope the Minister will look favourably on the amendment.

Lord Kennedy of Southwark: My Lords, we debated this issue in Committee. Many years ago, I was a member of the licensing committee of Southwark Council, although nowadays I am on Lewisham Council and am a member of its planning committee. I am very supportive of this amendment proposed by the noble Lord, Lord Clement-Jones, and the noble Earl, Lord Clancarty.

The noble Lord, Lord Clement-Jones, has a track record of standing up for live music, buskers and grass-roots music venues, and we should all be very grateful to him. We need to help and support the music and entertainment industries, and this amendment will go some way to doing that, as the noble Lord said. The night-time economy is very important and needs to be supported. Clubs, music venues and similar types of establishment bring billions of pounds to the UK economy every year. I very much welcome the appointment of the night tsar by the Mayor of London Sadiq Khan. He clearly recognises the importance of the night-time economy to the economy of London as a whole and is working to ensure that the economy works for industry and residents. It may well be that, as we get new metro mayors around England in the next few months, we find that they will follow his example and do the same to support the night-time economy in their cities.

I also recall our debate in the Moses Room some months ago when we looked at the activities of some local authorities and how they applied legislation. It seemed to me that some people have gone well beyond their powers there. However, I support the amendment and hope that the noble Baroness can give a positive response when she replies.

5.45 pm

Baroness Chisholm of Owlpen: My Lords, Amendment 172 seeks to add,

"the provision of social or cultural activities"

to the list of licensing objectives. This would require licensing authorities to make licensing decisions based on this objective, such as placing conditions on licences with regard to the provision of social or cultural activities.

As I explained in Committee, the existing licensing objectives, as provided for in Section 4 of the Licensing Act 2003, seek to reduce harm, which can be evidenced. Licence conditions intended to reduce the level of harm can be easily understood—for example, a requirement to restrict noise levels. Requiring licensing authorities to consider the provision of social or cultural activities would run in contradiction to the other licensing objectives, all of which are aimed at harm reduction.

Importantly, the 2003 Act provides that when a licensing authority receives a compliant application for a premises licence or club premises certificate, it must grant the authorisation unless it receives "relevant representations". In effect, this means there is a presumption that licensing authorities will grant a licence in respect to an application, with appropriate conditions, unless there are strong concerns in terms of the licensing objectives.

I respect the noble Lord's intentions with regard to grass-roots music venues and cultural participation, and share his desire to see a vibrant music industry, but I do not feel it is appropriate to use the 2003 Act to pursue that goal. On that basis, I hope the noble Lord will be content to withdraw this amendment.

Lord Clement-Jones: I thank the Minister for her response and the noble Earl, Lord Clancarty, for his contribution. One of the key points that he made, and which we are making with this amendment, is that of course local authorities have to make judgments currently. That runs, to use phraseology used by the Minister herself, directly counter to the arguments that are being made by the Government. She talks about evidence of harm, as if somehow under the current objectives it is all cut and dried and the evidence is absolutely clear-cut, but the fact is that judgments are made by local authorities. I am sure that when the noble Lord, Lord Kennedy, was a councillor in Southwark, he had a very enlightened approach to these matters, but these things are a matter of interpretation, and how you treat the evidence of harm is a subjective matter. In many cases, strong concerns might be disregarded because there are other, supervening objectives that a local authority thinks are important, or it may give more time for remedy.

There are all sorts of aspects, so to regard the current set of objectives as somehow pristine and able to be interpreted with huge clarity by local authorities, in contrast to this confused, woolly cultural objective, is only to confuse the issue. It is really a way of saying that the status quo is fine. But the status quo is not fine, and local authorities need some further guidance on these matters. I am not going to push this amendment further at this stage, but I hope there is a way in which further guidance or some other nudge towards a better solution for our night-time and grass-roots music venues is achievable. I am sure from the nods that I am receiving from the Government Front Bench that there is some sympathy for that approach. Now I am getting completely the reverse—clearly I had lulled myself into a false sense of security, which is always a big mistake in this House.

I hope the drip-drip of the fairly incessant rhythm—perhaps that is the right phraseology to use in connection with live music venues—of the campaign to ensure that we keep our live music venues has some effect. I entirely agree with the noble Lord, Lord Kennedy, that the night-time tsar in London is a fantastic new development, and I hope that other combined authorities will follow what London is doing in that respect.

[Lord Clement-Jones]

I believe the Home Office also has responsibility in this area to help to preserve our venues, rather than simply stonewalling and saying, "We've got a very fine Licensing Act as it is and we don't need any further objectives". When we come to our next debate, I am sure the Government will make the same argument but they may find a rather different response when it comes to a vote. In the meantime, I beg leave to withdraw the amendment.

Amendment 172 withdrawn.

Amendment 172A had been retabled as Amendment 173C.

Amendment 173

Moved by ***Baroness Deech***

173: After Clause 126, insert the following new Clause—

"General duties of licensing authorities (No.2)

(1) Section 4 of the Licensing Act 2003 (general duties of licensing authorities) is amended as follows.

(2) After subsection (2)(d) insert—

"(e) securing accessibility for disabled persons.""

Baroness Deech (CB): My Lords, I am sorry to say that the noble Baroness, Lady Campbell, whose name is also on this amendment, is unwell. Her eloquence will be sorely missed this evening.

These five words which the amendment would insert would provide a simple and effective improvement in life for disabled people, and would fulfil one of the key recommendations of the Lords Select Committee on the Equality Act 2010 and Disability, which I have had the privilege of sharing. This amendment is a narrowed-down version of Amendment 210 in Committee. It is supported by the Access Association and the Equality and Human Rights Commission. It originated with a suggestion put to the Select Committee by a spokesperson for the National Association of Licensing Enforcement Officers, who has also written in support. The Select Committee on the Licensing Act 2003 has no objection to it.

It is not just about disability; it is about all of us as we get older. It is about mainstreaming accessibility into everyday life. The ability—indeed, the right—to participate in various everyday areas of life can depend on the ability to access public spaces and buildings. Moreover, under the United Nations Convention on the Rights of Persons with Disabilities, the UK bound itself to ensure that disabled people enjoy the rights to equal access set out in its Article 9. The Government have been criticised by the inquiry set up under that convention. Here is a way to show that that criticism is unjustified.

One-quarter of the disability discrimination-related inquiries to an Equality and Human Rights Commission helpline relate to failures to make reasonable adjustments. That is a big problem, and it is clear that some service providers do not understand what they have to do. If the amendment were passed, applicants for licences would have to include consideration of the requirements of disabled people from the outset in the application process. Accessibility could then be included in the licence conditions and would become just a regular objective.

In the debate in Committee, the Minister was against this on two grounds. The first was that it duplicated existing requirements in the Equality Act, which puts duties on employers and businesses to make reasonable adjustments for disabled people. I cannot agree. The amendment would make those reasonable adjustments an anticipatory duty—that is the important aspect—not a burden on disabled people after they find they are excluded. The duty would be anticipatory and it would shift the burden off the shoulders of disabled people to the local authorities. Moreover, the existing duties of licensing authorities in Section 4 of the Licensing Act refer to,

"the prevention of crime and disorder … public safety … the prevention of public nuisance; and … the protection of children from harm".

The amendment is about the prevention of harm to disabled people. Duplication is clearly not a problem as there are scores of other statutes referring to health and safety, children and nuisance.

The amendment would not require extra activity by licensees or the regulation of activity. It is only about planning in advance for access. It would mean that businesses and premises, knowing that inspection was coming, would turn their minds to accessibility in advance of being found wanting. It would end the scenario of a disabled person turning up at, say, a restaurant and finding it inaccessible, with no remedy in hand, and the humiliation and embarrassment that follow. The local authority would be able to impose conditions on the licence. The ultimate sanction, but an exceptional one, would be a refusal to extend the licence or grant it until those adjustments were made. This is of course in a framework of what is reasonable.

The amendment is narrower and more focused than its earlier incarnation. Disabled people know that mere guidance to owners of premises does not work. The Equality and Human Rights Commission has explained that it is unable to monitor compliance. This is the chance for the Government to show their commitment to narrowing the disabled unemployment gap. It would be in line with the Prime Minister's policy of allowing everyone to go as far as their talents will permit. The Government should not speak with forked tongue on this policy. It would add not to the burden of licensing authorities but only to their objectives. It is disabled persons who bear the burden at the moment, and they are harmed by the existing barriers to access. Licensing is about preventing harm.

The second argument from the Government against the amendment was that it was singling out businesses and premises for compliance with the Equality Act. However, businesses and premises are being asked not to do anything extra but simply to put their minds to accessibility. This is not a party political matter; it is about common sense backing up compassion. It is about self-interest as we all get older. It is about legal requirements that already exist. It is about decency. I cannot imagine that it will be opposed in any quarter. This House should be seen to stand up for people who need it. This fits entirely with the mission on most sides of the House. I beg to move.

Lord Shinkwin (Con): My Lords, I support Amendment 173. I will not rehearse the arguments about the details of the amendment so persuasively set out by the noble Baroness, Lady Deech, and by the ad hoc Select Committee of your Lordships' House that she so ably chaired. Its excellent report on the Equality Act 2010 and its impact on disabled people bears testimony, if any were needed, to the proud and noble tradition of your Lordships' House of fighting against disability discrimination and for equality.

I was proud to serve on the National Disability Council, which was set up to advise on the implementation of the Conservative Government's 1995 Disability Discrimination Act, otherwise known as the DDA. Central to that Act was the concept of the duty to make reasonable adjustments to enable disabled people to access goods, facilities and services. As the noble Baroness, Lady Deech, has said, the nature of that duty was anticipatory. The onus was not on the disabled person so much as on the provider to anticipate reasonable adjustments. That anticipatory principle is sacrosanct. To ignore it would be to go backwards, with all the political consequences that would involve.

6 pm

I have to say that 21 years on from the DDA, I am suffering not from my disability but from a sense of déjà vu. Despite the milestone that the Act represented both for disabled people and for the Conservative Party, disabled people are still waiting. The regrettable fact is that the passage of time has not been matched by the passage of progress. The passing of this amendment would help to put that right.

I should like to explain briefly why I see this amendment as in keeping with fundamental Conservative principles. First, the obvious question—this relates to the idea that if the system ain't broke, don't fix it—is whether the system is broken and needs to be fixed. Yes, I know from personal experience that the system is broken because far too many disabled people are still trying unsuccessfully to access many licensed premises. Yes, it urgently needs fixing. If any noble Lord doubts that, I invite them to imagine how it would feel to be denied access to a licensed premises on account of being a Member of your Lordships' House. Yet, that is happening every day of every week to disabled people on account of being disabled.

Secondly, is the amendment consistent with the emphasis in the DDA on the anticipatory nature of the duty to make reasonable adjustments, which are so fundamental to that Act? Yes. Thirdly, is it practicable? Yes, which is why it has the backing of the Equality and Human Rights Commission, as we have already heard, and the Access Association among others. Finally, does it build on the Conservative Party's rich heritage of social reform and opportunity? Undoubtedly it does, which is why the party of the DDA should take this opportunity to build on the Act's principles and affirm its belief in disability equality.

I do not doubt my noble friend's empathy or sincerity, but I wonder whether for some non-disabled ministerial colleagues, the concept of making reasonable adjustments is to assume that disabled people will be reasonable, yet again, and adjust downwards their legitimate hope of not being discriminated against on account of their disability.

In conclusion, the Select Committee's report, from which this excellent amendment stems, sent an undeniably powerful message to disabled people that the anticipatory nature of the duty to make reasonable adjustments is not up for renegotiation. Disabled people should not have to demand access. Parliament needs to convey that same simple message tonight. Accepting this amendment would enable the Government to prove to disabled people that they mean what they say when they commit to building a country that works for everyone. I hope they will seize this opportunity to honour that pledge.

Baroness Thomas of Winchester (LD): My Lords, it is a pleasure to follow the powerful speech of the noble Lord, Lord Shinkwin. As the noble Baroness, Lady Deech, has said, this amendment is more focused than the one we tabled in Committee, but it is essentially about the same issue: giving the licensing authority a few more teeth by way of the licensing objectives to ensure that disabled people can access as many licensed premises as possible.

We are not being unreasonable. The key phrase for what a licensee should do to allow disabled people to access their premises is still only to make a "reasonable adjustment". A licensed premises which, for example, is entirely upstairs with no lift available would still not be caught by this addition to the objectives. I dare say the Reform Club would not be either, because it is up a flight of stairs, as many of us who cannot access that premises know.

Crucially, the amendment would transfer the onus to the licensing authority from disabled people themselves. If a disabled person cannot get into a pub, club, or restaurant, or any other licensed premises, why should they have to take action themselves which might mean taking the licence holder to court? Our lives are hard enough now without having to enforce the law too. This is a golden opportunity to do what many organisations think should have happened years ago—to have licensing officers who are able to take action beyond writing a licensee a letter or having a word in their ear.

Does this mean extra work for the licensing authority? No, because we are told that it visits licensed premises all the time. Are we putting an unfair burden on licensees? No, because we are talking about only a reasonable adjustment, not an unreasonable one. The whole point is to take the burden off the shoulders of the disabled person who, under present circumstances, is made to feel guilty for making a fuss, or even for not being able to join a group of friends for a drink or a meal. It happens all the time.

I believe the tide will turn one day when there are even more disabled people out and about than there are now. This is a perfect opportunity to act now.

Baroness Hamwee (LD): We support the amendment from these Benches. I congratulate those who tabled it on their persistence and on taking forward the work of a Select Committee to seek to translate it into legislation. That is an example of how this House can work so effectively.

As others have said on many occasions, we should not have to legislate, but it seems that we do in order to change attitudes. Sometimes we have to make something

[Baroness Hamwee]
enforceable before people come to understand that the subject is actually a right. The amendment has been described as anticipatory. Unfortunately one often sees that it is too easy for someone who infringes a rule not to take the sanction seriously. It can be regarded as an operating cost. If you are caught out and have to pay a penalty it is tough, but it is part of the costs of the business.

The value of the amendment is that bringing the issue into the licensing process will concentrate minds at the right point. I slightly take issue with my noble friend Lady Thomas, who talked about teeth. I say that it is about a mindset—so minds rather than teeth—but I think that is the only difference between us.

As the noble Baroness, Lady Deech, said, it is about mainstreaming the issue, making sure that everyone approaches it with the right objectives in mind. It is very harsh—almost offensive—to expect the objectives of the amendment to be met by individuals who find themselves unable to get into a set of premises, to use that as the example, not having known beforehand that there would be a problem, and to put the burden on them, in retrospect, to take it up—and we know that these rights are difficult to enforce, because individual rights are not easily enforced.

The Minister said in Committee that it would be inappropriate for licensing conditions to refer to specific legislation, because there is already an obligation to comply with that legislation. The new formulation is very neat. The current objective is shorthand, in just the same way as the other four licensing objectives are shorthand—one of them is for protection of children, safety is another. Indeed, the Minister gave examples of that in Committee. There would not be a call for the amendment if guidance worked and if good practice, which is no doubt observed by the good practitioners, was observed by those who have made the amendment necessary. We are very enthusiastic in support of the amendment, although it is sad to have to be enthusiastic for it.

Baroness Jones of Moulsecoomb (GP): I support the amendment not because I am disabled but because like most of our population I am getting older. Although I can still run for a bus, there is going to be a time when I shall not be able to. So this is not only for disabled people—it is for us all. It is for the whole population, and I think that we have been incredibly flabby as a nation in not putting this into practice before. I was astonished to find that there was this let-out and gap in our legislation and that people can still exclude and discriminate against an important section of society. If we do not all support this amendment today, I think that we are being thoroughly wet and flabby and not living up to the ideals of an enlightened society.

Lord Foster of Bishop Auckland (Lab): My Lords, I support the amendment. I was a member of the ad hoc Select Committee so ably chaired by the noble Baroness, Lady Deech, along with others who have already spoken. It was a great learning experience. In my long lifetime, if not as long as some in this House, I have always been struck by the immense progress that we have made over the years. But when you get into the detail, you are absolutely appalled that the rest of society imposes on our many colleagues with disabilities that they shall not enjoy that which we all take for granted. Imagine if we were not able to go into a restaurant or a pub—I am a teetotaller, but I spent half my life in pubs and bars trying to find Labour Members when I was Labour Chief Whip. It is appalling that we expect disabled people to put up with second best.

The Act put through in 1995 by the noble Lord, Lord Hague, is one of which the Tory Party is rightly very proud. I ask the Government to live up to that Act and agree to the amendment.

Lord Low of Dalston (CB): My Lords, I want to deal briefly with the argument that the amendment is not necessary because it simply duplicates what is already in the law. Licensed premises, including entertainment venues such as pubs, clubs and restaurants, are obliged under the Equality Act 2010 to make reasonable adjustments for disabled customers. It is intended to be an anticipatory duty; it falls on service providers to make the reasonable adjustments and take the appropriate action ahead of any disabled person coming along and asking to be allowed to avail themselves of the service. However, the Equality Act duty is widely disregarded, placing the onus on the individual to enforce the duty, when enforcement is extremely difficult for the individual on account of its cost and complexity.

6.15 pm

Adding "securing accessibility for disabled persons" to the list of licensing objectives under the Licensing Act 2003 would enable the Equality Act to be proactively enforced without the whole burden of enforcement falling on the individual. It is said that the amendment simply duplicates current law and does not add anything, so it is not needed, but that is not true. There is a reasonable adjustment duty, but it is difficult for the individual to enforce it, so some such mechanism as the amendment proposes is necessary to give the Equality Act teeth—and with great respect to the noble Baroness, Lady Hamwee, I prefer "teeth" to "mindset" on this occasion.

It is also said that the amendment adds nothing to the powers that licensing authorities already have, but that is also not true. The current objectives of licensing authorities are the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. There is nothing about securing accessibility for disabled persons. Amendment 173 is necessary if licensing authorities are to have the power to take accessibility for disabled persons into account.

The Equality Act's reasonable adjustment duty is intended to be anticipatory but, because of the problems for individuals in enforcing the duty, things do not tend to work out that way. That is why we need the power that the amendment proposes to give to licensing authorities to enable the enforcement of the duty, if not in an anticipatory way, at least proactively.

Lord Kennedy of Southwark: My Lords, Amendment 173, moved by the noble Baroness, Lady Deech, adds to the general duties of licensing authorities a duty of securing accessibility for disabled persons. The noble Baroness

raises an important issue; we debated the matter under another amendment, which sought to add in the provisions of the Equality Act in Committee.

It is right to say that people running licensed premises should do much more to ensure that the premises are accessible by disabled people, so that they can go out with their friends and family and enjoy themselves on those premises. It is right that disabled people are able to get access to those premises. When the Minister responds to the debate we may hear that there are general duties under the Equality Act 2010 in force already and that adding a specific amendment does not add anything to the statutory requirements already in force, as noble Lords have said. I hope that we can get a very careful explanation of why that is the case. The Government have a general duty to ensure that the law is properly applied, so I hope that they will use this opportunity to say clearly how they can ensure that that actually happens.

The problem often is whether licensed premises owners fully understand what their obligations are—or, if they do understand, whether they do anything to make those reasonable adjustments. We need to have a very careful explanation from the Minister in response to the debate, because we have the whole issue of the guidance, what review mechanisms are in place, and how the Government are going to ensure that the mainstream access to buildings to which the noble Baroness, Lady Deech, referred actually happens.

Baroness Williams of Trafford: My Lords, I thank the noble Baronesses, Lady Deech and Lady Thomas of Winchester, not only for their powerful speeches in this debate but for taking the time to speak with me over the past few weeks on the subject of this amendment. I also commend my noble friend Lord Shinkwin for the sheer quality of his speech and everyone who has spoken in this debate for their persistence in seeking to secure the rights of disabled people.

I am very sympathetic to the issues that have been raised on this matter. Licensed premises such as pubs, restaurants, theatres and cinemas are places where many of us choose to socialise and are therefore an important part of our daily lives. Too many of these venues are difficult for disabled people to access. The same is true of other, non-licensed businesses, too. The issue before us is whether we should use the regulatory framework provided for in the Licensing Act 2003 as a mechanism to enforce the provisions of a quite separate piece of legislation.

The noble Baroness, Lady Deech, and others have answered this question in the affirmative, arguing that it should not be left to disabled people denied access to licensed premises to have to fight on their own to secure their rights. The contrary argument, which I set out in Committee, is that this amendment is seeking to skew the regulatory regime in the 2003 Act and use it for a purpose for which it was never intended. The amendment potentially puts us on to a slippery slope. If we can use the 2003 Act to enforce the obligations placed on businesses by other enactments, where does this stop? Are licensing authorities then to be charged with, for example, ensuring that pubs and restaurants are paying the minimum wage or complying with other aspects of employment law?

While it could be argued that the particular challenges faced by disabled people make this amendment a special case, we should not seek to downplay the fact that there will be a cost to business. I accept that the amendment does not place any new direct obligations on licensed premises as a class of business, as they are already subject to the requirement to make reasonable adjustments. However, if we are expecting licensing authorities to act as an enforcement agency in this regard, there will unavoidably be a cost to them in discharging this new function. As the cost of the licensing system properly falls on licensees rather than the council tax payer, consequently any increase in costs for licensing authorities will need to be passed on through increased licensing fees. We must take this into account when considering the amendment.

I have heard the powerful voices expressed in the debate here today. I cannot ignore the strength of feeling in your Lordships' House. I believe that there is scope for compromise around possible amendments to the Licensing Act, which would work with the grain of the existing licensing regime. I cannot say more at this stage, as there is further work to do to scope such a possible compromise, but nor can I give the noble Baroness, Lady Deech, any undertaking today that I will be able to bring forward a government amendment at Third Reading. I hope, however, that the noble Baroness will agree to move forward on the basis of the preliminary discussions that we have had earlier this afternoon and, if not, perhaps we should come to a decision on her amendment today.

Baroness Deech: My Lords, I know that the Minister is sympathetic, but I still find the arguments unpersuasive. The Licensing Act is already used to enforce other Acts, for example, about children. If there is a cost to business, or a cost that is going to be passed on, are we to say that we can never make improvements for disabled people because it might cost somebody something? That simply will not do. I believe the Minister is suggesting that any amendment that the Government may bring forward would not remove the burden from disabled people but require them to make representations, make phone calls and use the internet to fill in forms and so on—when we know very well that even if you are able, trying to deal with local authorities on this sort of thing can be a nightmare. I am simply saying that access for disabled people—and, as the noble Baroness said, for the elderly, which is all of us eventually if not already—should be mainstreamed.

All parties in this House, some more than others, claim to have as their raison d'être improving the life of the disadvantaged and the vulnerable. To refuse to do this when presented with a straightforward, effective amendment is incomprehensible to me and goes against what I believe this House stands for. The amendment would make adjustments anticipatory and remove the onus from disabled persons. I do not believe that any compromise that the Minister might offer, well-disposed though she is—I know that she spent a lot of time on this—would meet that bill. Given the mission of this House, I do not think that we should talk the talk; I think that we should walk the walk. On that note, I wish to test the opinion of the House.

6.25 pm

Division on Amendment 173

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6.36 pm

Amendment 173A had been retabled as Amendment 173B.

Amendment 173B

Moved by ***Lord Beecham***

173B: After Clause 126, insert the following new Clause—

"Premises licence under Gambling Act 2005: gaming machines

After section 172 of the Gambling Act 2005 insert—

"172A Gaming machines: staffing condition on availability and use

A licensing authority, when exercising its power under section 169 to attach conditions to a premises licence, must include a condition, in respect of a licence for premises in which gaming machines are being used, that there must be at least two members of staff present on the premises while the premises are open.""

Lord Beecham (Lab): My Lords, I refer to my interests as a Newcastle City councillor and vice-president of the Local Government Association, inasmuch as parts of the amendments to which I shall refer would impact on local government.

I wish to speak to the two amendments in this group in my name and those of the right reverend Prelate the Bishop of Bristol and the noble Baroness, Lady Howe. Fixed-odds betting terminals, even after a reduction from £100 to £50 on the amount that can be wagered every 20 seconds, are a source of large profits and social and economic damage. The 35,000 machines to be found in betting premises are concentrated in poorer areas of the country, where they divert money from the local economy and are the scene of 40% of all serious crimes against businesses. As I pointed out in Committee, police callouts to attend incidents at these premises increased by 51% in 2014 from the previous year. Seven thousand machines a year are destroyed and assaults on staff are increasing. The London Borough of Newham, with no fewer than 87 of these shops, sees police being called out on average once every day to premises harbouring these machines. The Local Government Association backs Newham's campaign for more control over this growing industry.

The Campaign for Fairer Gambling commissioned a report on these machines which referred to the claim of the Association of British Bookmakers that increased regulation would cause a substantial loss of jobs in the betting sector. But whereas the £1 billion that is spent in fixed-odds betting terminals supports 7,000 jobs in the gaming industry, that diversion from other forms of consumer spending destroys 13,000 jobs in the wider economy. If the industry continues to grow to double its size in the next 10 years, the net cost to the economy will be the loss of 11,000 jobs, with the total annual wage bill affected by a loss of £650 million at today's prices compared with the level obtaining in 2013, on which the comparative figures are based.

The report also deals with the tax revenue flowing from the use of these machines. This year it is estimated that the duty received by the Revenue will be £78 million, but the amount of income tax and VAT lost will be £90 million. By 2023-24, the net annual loss will be £50 million. These figures do not, of course, reflect the indirect cost to the taxpayer of the consequences of the social damage arising from gambling—for example, in family breakdown or costs to the National Health Service, let alone the crime to which I have alluded.

BACTA, the body representing the manufacturers, suppliers and operators of 310,000 amusement machines —not those in betting offices or casinos—has come up with 12 proposals which it is submitting to the consultation being undertaken by DCMS. Interestingly, these include a new machine with a maximum stake of £10 instead of the current permitted stake of £50; a suggested jackpot limit of £125; and a high-percentage payout of 90% on the money staked, bringing the industry closer to the concept of amusement arcades rather than high-risk and expensive gambling.

All of this suggests that greater control of the industry, as envisaged in Amendment 173C, in the name of the right reverend Prelate, is required. In addition to the impact of the industry on society, however, there is also, quite literally, the impact on staff. In Committee I referred to the revealing fact that in many shops, where it is now usual to have only one employee, staff are housed in what is described as a cage, which they are permitted to leave only after 6.30 pm. Tellingly, Ladbrokes is now purchasing chairs weighing as much as 35 kilograms for customers—too heavy, it is assumed, for a disappointed customer, or indeed a criminal, to use in an assault on staff or to do damage to the premises. That is an indication of the seriousness of those issues.

Amendment 173B, in my name, prescribes that at all material times, at least two members of staff must be on the premises to deter violent behaviour and, if need be, to seek assistance. The noble Baroness, Lady Chisholm, replying to the debate in Committee, referred to the power conferred on the Secretary of State to set conditions by way of secondary legislation—under existing primary legislation—including staffing levels, and indicated the Government's awareness of,

"the dangers posed by fixed-odds betting terminals".—[*Official Report*, 9/11/16; col. 1232.]

She repeated this at a meeting she kindly organised and said that the Government would consider proposals emerging from the review they launched on 24 October,

[LORD BEECHAM]
in which the call for evidence closed two days ago. Can the Minister indicate when the Government expect to release the results of the consultation and their response to it? Of course, I do not expect her to give an indication at this stage of what that outcome will be.

However, I hope that the Government will not be swayed by the self-interested testimony of the industry or, for that matter, by the views enunciated in an article for ConservativeHome—described as "the home of conservatism"—by Christopher Snowdon, who rejoices in the title of head of lifestyle economics at the Institute of Economic Affairs and who in a recent article dismissed concerns about this industry and the terminals, concluding that they,

"might not be to everybody's taste but they have a place in the modern industry and existing regulation and taxation is more than adequate, if not excessive, for a gambling product that is only available in licensed, adult-only establishments".

The evidence contradicts that bland assertion of acceptance of this side of the gaming industry pretty comprehensively. One can only hope that, unlike the appointment of Brexit Ministers, the Prime Minister will not be tempted to appoint Mr Snowdon to be involved in the review or to advise the Government. I look forward to the Minister giving assurances that the Government recognise the need to change the regime under which this industry, which blights too many high streets and too many lives, operates, and that they will act quickly after receiving and considering the review report. I beg to move.

6.45 pm

The Lord Bishop of Bristol: My Lords, I will speak to Amendments 173C, 196A and 200A in my name and I support Amendment 173B, in the name of the noble Lord, Lord Beecham. I am grateful for the way in which he introduced this group of amendments.

Members of your Lordships' House will be only too aware that the House has rehearsed the arguments around betting shops, and in particular fixed-odds betting terminals, numerous times in the past year, and there seems to be little need to repeat them here in detail. We know that violent crime is on the increase in betting premises—up 68% in London over the past five years—and it seems very likely that the increasing reliance of betting shops on FOBTs is a key reason for this trend. I read just last night that of the 523 serious robberies committed in commercial premises in 2015, 200 took place in betting shops. Given the increasing threat of violence—which the noble Lord, Lord Beecham, has spoken well about—that betting shop staff face from organised thieves as well as angry, frustrated or opportunistic customers, the amendments in this group are an entirely reasonable attempt to help bring the situation back under some kind of control.

My amendment, which was first proposed in Committee by my right reverend friend the Bishop of St Albans, would give licensing authorities greater scope to impose conditions on the use of gaming machines in betting premises, with the aim of enabling those authorities to better enforce the licensing objectives of preventing crime and protecting the vulnerable. It would also clarify the ability of licensing authorities to undertake a cumulative impact assessment, as well as taking other risk factors into account. Given that fixed-odds betting terminals now make up 56% of the profits of a high street betting shop, it seems obvious to me, at least, that licensing authorities should be able to impose conditions on the use of these machines in areas where this is a high risk of gambling-related harm.

This amendment is, of course, limited in scope. Even if licensing authorities could impose conditions on the use of gaming machines, there would be limited opportunities to do so in practice. The "aim to permit" licensing framework of the Gambling Act 2005 is so heavily skewed in favour of the betting industry that licensing authorities have great difficulty imposing any conditions whatever on betting premises, the threat of judicial review deterring all but the boldest local authorities from taking significant measures to combat gambling harm through conditions. That is why I support the amendment in the name of the noble Lord, Lord Beecham, which would make minimum two-person staffing a mandatory condition of a betting premises licence. Although, as the Minister pointed out in Committee, licensing authorities can in theory impose conditions requiring two-person staffing levels, in reality the practice is much more difficult. Under the current licensing framework, only a mandatory condition can ensure adequate protection for staff.

In Committee the Minister suggested that amendments such as these should be properly considered in the round as part of the Government's review of stakes, prizes and licensing arrangements. I entirely agree, so I hope the Minister can reassure the House that the suggestions in these amendments will be thoroughly considered as part of the Government's review.

First and foremost, can the Minister reassure me that the Government will look at how the Gambling Commission might widen the scope of the conditions a licensing authority might impose in relation to gaming machines? Will they look in particular at the potential for licensing authorities to impose conditions that restrict the ability of customers to engage in anonymous fixed-odds betting terminal gaming—which would be possible without changes to primary legislation? I know that the betting industry is planning to trial new methods of identification, including biometric identification. If those trials prove successful, licensing authorities should be able to require the use of such methods in areas that are particularly vulnerable to gambling-related harm.

Secondly, will the Government encourage the Gambling Commission to issue guidance on the potential for licensing authorities to undertake cumulative impact assessments, as is currently possible with alcohol licensing? The latest research shows that people living near a betting shop cluster are at greater risk of gambling-related harm, and licensing authorities should be able to reflect that in policy-making.

Finally, will the Government look at the way in which the current "aim to permit" licensing framework inhibits the ability of licensing authorities to tackle gambling-related harm through the use of conditions? Colleagues have spoken to licensing authorities, which feel that they simply have no chance of imposing meaningful conditions when confronted by a betting

industry armed to the teeth with eminent QCs. If the Government are serious about giving meaningful power to local decision-makers, they need to review this framework as a matter of course; otherwise, amendments to mandatory conditions, such as that proposed by the noble Lord, Lord Beecham, will be the only way to make effective progress on reducing crime or protecting staff.

Baroness Howe of Idlicote (CB): My Lords, I am very pleased to speak in support of Amendments 173B and 173C in the names of the noble Lord, Lord Beecham, and the right reverend Prelate the Bishop of Bristol. I have added my name to both.

Beginning with Amendment 173C, I support the proposal to devolve more powers to local authorities so that they can determine, going forward, the number of fixed-odds betting terminals in their area. As has been said before, fixed-odds betting terminals present a very distinct challenge that results from the unique way in which they combine high stakes with a very high speed of play, such that it is possible to lose £18,000 in an hour.

Rather than repeat the statistics that I cited in our debate on these amendments in Committee, I want to highlight a study specifically of the play of people with loyalty cards. This is particularly interesting because those with loyalty cards tend to gamble regularly, and the research demonstrated that 37% of such users manifest problem gambling behaviours. Are we as a society really happy to countenance accepting a form of entertainment in relation to which regular engagement exposes nearly 40% of those partaking to serious risks?

A study published in 2016 on addictive behaviours in 72 homeless adults in Westminster identified elevated rates of problem gambling in the group, with 82.4% of those reporting problem gambling stating that their gambling preceded their homelessness. The authors of the report said that,

"our homeless participants identified Fixed Odds Betting Terminals as the most problematic form of gambling".

In responding to the debate on these amendments in Committee, the Minister was keen to highlight the success of the Gaming Machine (Circumstances of Use) (Amendment) Regulations 2015, which require gamblers wishing to bet more than £50 on B2 FOBTs to do so either through a verified account or via over-the-counter authorisation. However, an assessment by the Department for Culture, Media and Sport revealed that only a limited number of stakes—between 8% and 11%—were being placed through verified accounts and that people placing bets with staff occurred in only around 1% of the sessions. Thus the uptake for stakes being placed through verified accounts and OTC authorisation was incredibly low and suggests that the Government's attempt to track players has been unsuccessful.

In addition, the DCMS evaluation report noted that from 2014 to 2015 there had been a £6.2 billion reduction in bets over £50 but a £5.1 billion increase in stakes of between £40 and £50. This suggests that the intervention is simply changing the way that players play and is not seriously curbing problem gambling connected to FOBTs. The fact that increasing numbers of people are betting just under £50 every 20 seconds is deeply disturbing.

On Amendment 173B, I note that in her response to the debate in Committee the Minister said:

"The Association of British Bookmakers' Safe Bet Alliance provides specific guidance on staffing security in bookmakers, which was drafted with the input of the Metropolitan Police. Members of the Association of British Bookmakers operate single staffing only when a risk assessment has been undertaken".—[*Official Report*, 9/11/16; col. 1231.]

The implication of what she said seemed to be that this was satisfactory. However, given the extensive evidence of gamblers vandalising FOBT machines after losing apparently considerable sums of money, given also that betting shop staff recall having felt intimidated and scared when individuals have lost money on FOBT machines, given too that betting shops accounted for more than 200 of the 523 serious robberies against commercial properties in London in 2015, given that the Association of British Bookmakers has a very strong incentive not to allow its main source of income to be seen as a catalyst for public disorder, and, lastly, given that, although the Metropolitan Police can provide advice, it does not make law, it seems to me that we should not conclude that the current arrangements are satisfactory.

The Prime Minister has said that she wants to make Britain a country that "works for everyone", as has already been mentioned. Although FOBTs are certainly working well for betting shops, they are not working well for other people—especially those in deprived communities, where a large number of FOBTs are located.

In conclusion, I emphasise two things. First, although I strongly support the proposal to give local authorities powers to limit the number of FOBTs, thereby providing the opportunity to limit the number of these dangerous machines, is it not far more important to make FOBTs less dangerous? To this end, I am very committed to the Bill introduced by the noble Lord, Lord Clement-Jones, in the previous Session, which proposed reducing the maximum stake per spin from £100 to £2. That is the big issue, and I very much hope that the Government will adopt this solution in their gambling review.

Secondly, I hope that the Minister will accept these amendments today, but if she says that we must await the outcome of the review on this matter, I hope that what I have said at this stage and previously will be taken into account as part of the review process. Finally, can she say when she expects the results of the gambling review to be published?

7 pm

Lord Rosser: We certainly support the objectives of these amendments. As there was in Committee, there have been plenty of examples of the damage that is currently being done through these terminals and of the problems that we now face.

When the matter was discussed in Committee, the Government said that they understood the concern that such gaming machines could fuel problem gambling and that they were committed to reducing the risks of potential harms associated with such machines. They did not express any enthusiasm for adopting the

[Lord Rosser]
amendments in Committee and, as has already been mentioned, they said that there was already a review under way which had been announced on 24 October. One assumes that the Government will be looking for the review to make recommendations which will enable them to implement the commitment they said they had in Committee to,

"reducing the risks of potential harms associated with such machines".—[*Official Report*, 9/11/16; col. 1231].

Perhaps the Minister could indicate that that is how they are looking at this review and expect it to produce recommendations which will enable them to stick to the commitment that they enunciated when the matter was discussed in Committee.

As has already been called for—and I would do the same—it would be helpful if the Government could indicate now what the timescale is. They said in Committee that the call for evidence period would close on 4 December, which has now passed. I shall not ask the Government on 7 December what their conclusions are from the call for evidence but it would be helpful to know by when they will have come to conclusions. They said in Committee that, following the close of the period of the call for evidence, they would consider proposals based on robust evidence provided to assist in their decisions.

Baroness Chisholm of Owlpen: My Lords, as the noble Lord, Lord Beecham, has explained, these amendments would have the effect of devolving power over licence conditions for gambling premises and gaming machines to local authorities. Such conditions would, among other things, enable licensing authorities to impose minimum staffing levels on premises with such machines. I thank the noble Lord and the right reverend Prelate the Bishop of Bristol for again bringing this important matter to your Lordships' attention. Let me emphasise that the Government are alive to the concerns about the dangers that fixed-odds betting terminals can pose.

It is worth reiterating that, as we speak, the Government are holding a review into the regulation of gaming machines, gambling advertising and the effectiveness of social responsibility measures on gaming machines, with a specific look at potential harm caused to players and communities. As part of this, we are liaising closely with the Local Government Association, among others, and we have received submissions related to the devolution and/or creation of additional powers for local authorities which we will of course consider alongside other proposals and evidence received.

I emphasise in particular that, as part of the review, the Government and the regulator, the Gambling Commission, are carrying out a thorough process which will look at all aspects of gaming machine regulation, including categorisation, maximum stakes and prizes, location, number and the impact that they have on players and communities in relation to problem gambling and crime among other things. All of these factors are potentially relevant and interrelated, and all should be considered together when looking at whether changes could or should be made to current gambling entitlements. We believe that the correct mechanism for looking at these issues is in collaboration with the regulator, the Gambling Commission, drawing on the best evidence available and subject to open consultation.

In addition, before we take any decision on this issue, we would want to ensure that the following risks were properly considered and consulted on. Any local authority which sought to exercise a power to change the number of fixed-odds betting terminals allowed on licensed betting premises would be likely to find its decision the subject of legal challenge. If these legal challenges are considered robust enough, we may be in a position of devolving a power that could not be effectively deployed. Local authorities have had a number of high-profile legal challenges from bookmakers on planning matters and may be reticent about utilising additional powers if it led to costly and protracted legal cases. We would therefore want to consult with the Local Government Association and local authorities on this issue. Again, I reiterate that the current review process is the appropriate mechanism to assess this, rather than immediately launching into these amendments to the Gambling Act.

We are also mindful of the possibility that piecemeal reform could give rise to unanticipated consequences. For example, if a local authority decides to reduce the number of fixed-odds machines, it may have the effect of encouraging operators to seek to open additional premises, furthering the problem of clustering.

We have already taken steps to tighten the controls on these machines and we have set out our plans for the review of gaming machines, gambling advertising and social responsibility which will include a close look at the issues related to fixed-odds betting terminals. I emphasise that we are taking this very seriously and that the review is looking into all these issues. When the review was announced on 24 October, it was stated:

"The review will be considering robust evidence on the appropriate maximum stakes and prizes for gaming machines across all premises licensed under the Gambling Act 2005; the number and location of gaming machines across all licensed premises; and social responsibility measures to protect players from gambling-related harm (including whether there is evidence on the impacts of gambling advertising and whether the right rules are in place to protect children and vulnerable people).

The review will include a close look at the issue of B2 gaming machines … and specific concerns about the harm they cause, be that to the player or the communities in which they are located.

In launching this review I want to ensure that legislation strikes the right balance between allowing the industry to grow and contribute to the economy while ensuring consumers and communities are protected, including those who are just about managing".—[*Official Report*, Commons, 24/10/16; col. 1WS]

On the timetable for the review, as noble Lords know, the call for evidence closed on 4 December. An enormous amount of evidence was generated and there was a great deal of interest from the general public as well as from a variety of interest groups, local authorities, trade bodies and industries, and we will be looking in depth at the evidence that was submitted before considering proposals, which we hope to announce next year.

Given that this process is in train and that we are taking it extremely seriously, I invite the noble Lord to withdraw his amendment.

Lord Beecham: My Lords, I am grateful to the Minister for her reply. At one stage I thought about asking her how much I should stake on the change that she seemed to be sympathetic towards.

However, I am slightly disconcerted by the latter part of the noble Baroness's speech, when she referred to concerns about legal challenge. If there are such concerns, I hope the Minister will indicate that the Government would—assuming they want to make a change—enact the necessary legislation to pre-empt the legal challenge which might arise under the system as it currently stands.

With respect, I question one of the assumptions which is often made, and to which I referred in moving the amendment, about the contribution made to the economy. If the study to which I referred is correct, there is a net loss to the economy from the current operation of the industry in respect of fixed-odds betting—I am not talking about other elements of gambling. I invite the Minister to ensure that proper consideration is given to that aspect. The industry will undoubtedly talk up the economic benefits, but according to the report that I cited that seems not to be the case and it is misleading to make that claim.

However, it is clear that the Minister is at least sympathetic to the amendment. Although I will not seek to divide the House, I hope for a positive response as part of the process that the Government have already initiated. I beg leave to withdraw the amendment.

Amendment 173B withdrawn.

Amendment 173C not moved.

Amendment 174

Moved by ***Baroness Berridge***

174: After Clause 127, insert the following new Clause—

"Prescribed limit of alcohol

(1) In section 11(2) of the Road Traffic Act 1988 (interpretation of sections 4 to 10), the definition of "the prescribed limit" is amended as follows.

(2) For paragraph (a) substitute—

"(a) 22 microgrammes of alcohol in 100 millilitres of breath,".

(3) For paragraph (b) substitute—

"(b) 50 milligrammes of alcohol in 100 millilitres of blood, or".

(4) For paragraph (c) substitute—

"(c) "67 milligrammes of alcohol in 100 millilitres of urine,"."

Baroness Berridge (Con): My Lords, I shall speak also to Amendment 175. Amendments 174 and 175, in outline, seek to reduce the legal limit for alcohol in the blood for drink-driving and introduce changes for younger or probationary drivers. I thank the noble Lord, Lord Brooke, and the noble Baroness, Lady Jones, for their assistance and for putting their name to the amendments. I thank the Minister for all her interest and efforts regarding this matter. I thank her particularly for arranging a meeting yesterday for interested Peers with the Minister, Andrew Jones, who has responsibility in this area.

I shall not seek to repeat in full the arguments made in Committee, save to mention that the number of deaths from drink-related accidents has remained static for five years, at 240 a year, and that 2.9% of those accidents fall within the 80 milligram to 50 milligram range to which the amendment relates. I know that the Minister has explained that there is a group of persistent offenders, but the 2.9% of accidents that fall between 50 milligrams and 80 milligrams are within the low-hanging fruit area that could be avoided if there was a reduction in the limit allowed in the blood.

Before I mention two additional areas for consideration since Committee, I want to outline how I see the debate on this issue. Both sides, whether it is those moving the amendment and all the organisations, such as the RAC and RoSPA which support it, or the Government, base their arguments and conclusions on evidence—they have come to different conclusions and interpretations on the evidence. For instance, a PHE study recently published in *The Lancet* said that 40 milligrams in the blood increases the risk of an accident. I therefore hope that I have misunderstood Her Majesty's Government in saying that theirs is the only evidence-based position. It is not conducive, particularly in today's climate, to conduct debates in a polemic way rather than seeking to accept that both sides are acting on evidence and coming to different conclusions.

Of the two additional matters to have arisen since Committee, the first relates to disparity and the second is conceptual. On disparity, the amendment relates to the law and the specific offence of having too much alcohol in the blood. That is an offence in and of itself under our law. There is now a different limit in Scotland and in Northern Ireland. That offence often stands in conjunction with, and is pertinent evidence for, the more serious offences in our law of causing death by dangerous driving or causing death by careless driving, the latter being a more recent change to our law. It is important to remember the context of those offences. They were introduced because it was very difficult to persuade juries to convict for manslaughter. Juries cannot relate to walking down the street with a knife or a gun, but they can relate to being in a car, failing to drive properly and causing an accident. That is the background to those offences.

7.15 pm

A particular disparity in relation to this matter has come to my attention, and it relates to devolution. We have devolved to Scotland the power to set a different level of permitted alcohol in the blood—it is now 50 milligrams there—but the offences of causing death by dangerous driving and causing death by careless driving are the same on both sides of the border. Many of your Lordships may have watched the very popular television series, "The Bridge", a Scandinavian drama where the murder victim's body is found on the huge bridge between Denmark and Sweden. Therefore, both police jurisdictions are involved in investigating the case. But let us consider the case of someone driving from Scotland into England whose inadvertent driving causes a death first in Scotland and then later a death in England. In the fictional series that I have mentioned, there was no problem in both police forces

[Baroness Berridge]
investigating the murder because it was a murder in Sweden and in Denmark, but, because of the way in which the law is framed between England and Scotland, such an offence would be particularly difficult to investigate here because, in relation to charging for causing death by careless driving, in one jurisdiction 70 milligrams is over the legal limit and in the other it is not. The offence would obviously be considered very differently by the Crown Prosecution Service and the procurator fiscal because, in a decision whether to prosecute, the 70 milligrams is much weightier evidence before the court if it is also a criminal offence. Assuming a decision to prosecute is made, how does a judge direct the jury in each jurisdiction? Such a direction is affected by whether the level of alcohol in the blood is a criminal offence in the courtroom. We have created this problem in relation to how we prosecute these matters.

It matters particularly to victims. Even when we are not talking about the same perpetrator, which I recognise is unlikely, will we not end up in a situation where the standard of driving, particularly driving without due care and attention or careless driving, may be very similar but the limit for alcohol in accidents that occur in Scotland will be different from that in those that occur in England? Surely families in England and Wales will also want the criminal law to recognise that the behaviour that led to the death of their relative is meritorious of a conviction or at least a trial in the criminal court. At its best, the criminal justice system is part of the healing process for victims. It is not too far-fetched or the stuff of fiction to think that we will end up with victims in England and Wales feeling that the death of their relative was not viewed in the same manner as that of someone in Scotland or, I might add, in Northern Ireland. If there are prosecutions for the 240 annual deaths that I talked about, it will be important to gain that evidence as well.

On the conceptual point, it has been mentioned again and again from the very beginning in meetings with Her Majesty's Government that there is a balance to be struck between personal freedom and public safety. I of course accept that you are free to go to the pub; you are free to drink; you are free to have many drinks, subject to the licensee's obligations. You are also free in this country, although I would be very sad to see it, to drink yourself to death if you wish. But it is a very different consideration for public safety if, when you have had at least some alcohol, you then get behind the wheel of a car. You cannot pilot a plane or drive a train or tram while you have any alcohol in your blood, and you are not allowed to operate many other types of machinery. So this is not about fining people who have had one glass of wine in the pub. Bringing down the limit and beginning to create zero tolerance to drinking and driving would not be a bad thing.

I recognise that there will soon, I hope, be evidence available from the Scottish change in the law. There will be evidence, as we heard outlined previously, about the rural economy, and there will, I hope, be evidence about the reductions in deaths and injuries. We need to be careful about the difference between correlation and causation when we look at that evidence. But there will also be, I hope, the evidence from the criminal courts on how the change in the alcohol limit affects prosecution, particularly that of causing death by careless driving. I hope that my noble friend the Minister will be able to give assurances that the Government will take forward this matter constructively. I beg to move.

Baroness Jones of Moulsecoomb: My Lords, I support both Amendments 174 and 175. I rise slightly wearily because I do not know, after the calm, clear and patient explanation from the noble Baroness, Lady Berridge, of why this is necessary and it is illogical not to do it, that I can find any more reasons to give to the Government for making this change. However, I will try.

We heard from Mr Grayling in the *Daily Mail* today—he was Secretary of State for Transport this morning, but I am not sure if he still is—that the Government are,

"not interested in penalising drivers who have had 'a glass of wine at the pub'."

Nor are we. Drinking is a perfectly acceptable way to spend your time, but I object when the person who has had a drink gets into a car, which then becomes a dangerous weapon. We hear again and again that any alcohol in your blood can impair your faculties and behaviour. Drinking and driving is just not something that we ought to accept in civilised society.

We heard that the number of deaths has plateaued at 240 a year since 2010. From the available evidence, there are estimates that 25 people die unnecessarily a year, and we could reduce that number still by bringing down the limit of blood alcohol content. Yet it seems to me that we accept 25 deaths a year. Why on earth do we think it is okay for 25 people to die on the roads? That does not even include the people injured from crashes. Some 8,000 people a year are injured from crashes, so if we accept that 25 lives would be saved, we must also accept that quite a lot of injuries would be prevented as well.

Lowering the limit would be a deterrent. We do not need to wait for Scotland. Multiple countries and multiple reviews show that lowering the limit has a deterrent effect. It is in fact the biggest deterrent, and it is cheap and easy to do. It is something we ought to do quickly. Martin Luther King said that,

"Injustice anywhere is a threat to justice everywhere".

It is an injustice when we accept that deaths on the road are something we do not want to deal with because we do not want to stop people drinking and getting in their cars afterwards. Personally, I think that is unacceptable.

Baroness Hollins (CB): My Lords, I will speak briefly to the evidence. An analysis was done in Switzerland comparing both novice and experienced drivers who had been fatally or seriously injured, and whether they had been drinking alcohol. The analysis compared two time periods, before and after reducing the legal limits, for 2011 to 2013 and 2014-15. In between-time, the limits in Switzerland were reduced to 20 milligrams for novices and 50 milligrams for others. The study found a larger reduction of serious alcohol-related accidents in both groups of drivers than of accidents without alcohol between the two time periods.

Early trends from Scotland with respect to the impact on fatal accidents of reducing the drink-driving blood alcohol levels to the same levels in December 2014 are also very promising. In 2010, the North report published by the Government reviewed drink and drug-driving laws, and modelled that a lower limit of 50 milligrams of alcohol in 100 millilitres of blood would save a significant number of lives. Applying those models to Scotland suggested that between three and 17 fewer deaths per year could be expected. The good news is that there seems to be a trend of that happening. In 2015, the first full year in which the reduced limit was in place, there were 24 fewer fatal accidents, a 13% reduction, and 98 fewer accidents involving serious injury—a 5% reduction.

As the noble Baroness said, it is difficult to attribute causation conclusively. However, is there really any reason why the results found in other countries should not also apply here? I strongly support a reduction in these limits to the same levels that apply in other UK jurisdictions. We must not forget that in May this year, your Lordships' House also voted to support this reduction, anticipating that this could save as many as 100 lives a year. The measure is supported by a significant majority of the public.

Lord Brooke of Alverthorpe: My Lords, I am pleased to add my support to the two amendments of the noble Baroness, Lady Berridge. As she did, I express gratitude to the Minister for arranging the meeting we had with Andrew Jones, and for producing an evidence-based specialist to give us his views—which were very interesting but not totally conclusive. The House previously adopted a Private Member's Bill opting to go down to 50 milligrams and got that through earlier in the year. We have not moved any further forward and the conversations yesterday did not seem to indicate much change in prospect. So where can we make some progress? Where is progress needed?

The man who spoke to us yesterday, Paul Williams, said that we really need to focus—I am sure the Minister will say this—on the hardened drinkers and drivers who persist and will not take any notice no matter what we do in changing the limit. He said that in his opinion people fall into two categories: they are either entirely selfish, which is what he was talking about with mainly males who do this; or they are sick. Yet if we look at the number of accidents on the roads where there is a link to alcohol, the disproportionate bulk is among young people. This is where Amendment 175 needs closer attention in future.

Young people are killing themselves on the roads for a whole variety of reasons. Some of them are drinking as well. It was quite disturbing to hear yesterday the Secretary of State say that it is perfectly all right for drivers to drink a glass of wine. For adults, maybe, yes, but it is quite unacceptable for young people—the ones suffering most in these accidents—to hear that. A lot of the accidents arise through their inexperience but they have almost been given encouragement to drink by the Secretary of State. I hope the Minister will take that message back. There is a problem here about younger people that must be focused on.

The Minister suggested that we should look at his report produced in December last year on improving safety on roads. I always take the advice of the Front Bench and looked at that last night, particularly the sections relating to young people. One area he mentioned in the course of the discussion was that young people will be permitted to drive on motorways with an experienced driver with dual controls. That is a good thing and it is in the report.

The other point the report makes is that £2 million is going to be spent on learner and probationary drivers, trying to get better-quality performances from them and to help them in a whole range of ways. I do not know why the Government are going to spend £2 million on this. The Department for Transport has had two previous reviews undertaken by the Transport Research Laboratory—the noble Earl, Lord Attlee, probably knows more about this than I do—focusing on the problems we have with younger drivers and deaths and accidents. It has come up with a range of suggestions, many of which have not been implemented, which might lead to a reduction in the number of people killed. In particular, it has said that we should try early on to get younger people not to drink. It has opted for 50. Amendment 175, which is modest and tries to address the big problem with young people, should not be so lightly dismissed in the way I rather sensed yesterday that we were being dismissed. We were told that there would be a continuing review but no specific review on Scotland. I hope I misunderstood the Minister and she will be able to say to the noble Baroness, Lady Berridge, that there will be a formal review of that. I particularly hope that she will say something more about young drivers.

7.30 pm

Earl Attlee: My Lords, I oppose these amendments. I attended the meeting yesterday with my noble friend Lady Berridge and other noble Lords. We all agree that any alcohol in the blood will adversely affect someone's driving. There is no doubt about that. As regards Amendment 175 about young drivers, this is not a matter for my noble friend the Minister in the Home Office but I was very disappointed that the Government wimped out on graduated driving licences, but of course that is another matter.

I am far from convinced that the experiment of lowering the blood alcohol level in Scotland will have the desired effect. I worry that it may even have a negative effect. We will have to wait and see. Next year we will get the statistics from Scotland and have them analysed carefully and we will know for certain which side of this debate is right and which is wrong. If I am wrong, I will be perfectly happy to say, "I was wrong". The wise course of action will be to wait and see and get those results from Scotland and, if necessary, put pressure on the Government to make sure that those results are analysed skilfully and quickly.

I will say a word about the rural economy. If this change is the right change in terms of road safety, we should do it. In this ongoing debate, I have not heard any new arguments in the past few years. If the Opposition want to support these amendments, they will have to explain what has changed. The party opposite, when in government, had at least two excellent Ministers for Road Safety and the very same arguments that have been presented today were presented to those Ministers

[Earl Attlee]
but they did not make the change. If the noble Lord, Lord Rosser, supports the amendment, I would love to know what has made his party change its position.

Lord Paddick: My Lords, in response to similar amendments in Committee, the Minister pointed out that reduced drink-drive limits in other countries did not necessarily result in fewer drink-drive-related deaths. She went on to highlight the importance of penalties, which are harsh in the UK: enforcement, although this is likely to be less with the cuts in recent years to roads policing in the light of cuts to police budgets generally; and hard-hitting campaigns that have successfully made drink-driving socially unacceptable in a way that it is not in other countries. But these are not alternatives to a reduction in the drink-drive limit; they would still apply.

Reducing the opportunities to evade prosecution and carrying out medical tests to ensure that offenders are not dependent on alcohol before they get their licences back are also very good steps. However, the noble Baroness, Lady Berridge, made some very powerful points. She said that the number of drink-drive-related deaths had been static over recent years. My understanding is that the overall number of deaths on the roads has been reducing over the years because of improved safety. If it is true that the number of drink-drive related deaths is not reducing in line with that, it is an increasing problem, not a static one.

A wide range of organisations—motoring organisations, the police and others—supports a reduction in drink-drive limits. Although I found the arguments around the different limits in Scotland and in England and Wales a little complex—rather like a whodunit—clearly there is an anomaly there. The plain and simple issue is that current drink-drive limits enable people to take the risk of having a drink and driving. The proposed limits would deter people from drinking anything before they got into a car. Surely that would be safer. On balance, and having discussed this with our transport spokesperson, we support the amendments.

Viscount Simon (Lab): My Lords, I will mention just a couple of things. First, in the Serious Organised Crime and Police Act all those years ago I got an amendment through on the evidence on roadside breath-testing, which will get the readings there and then, rather than two hours or so later at the police station. I would love to see this kit eventually approved by the Home Office. It has not been approved yet. Secondly, we are talking about having a glass of wine or whatever. I am teetotal so I would not have the slightest idea but I have been told that the glasses of wine in most restaurants and pubs have got bigger. Therefore, the chance of going above the limit has also increased.

Lord Rosser: Unfortunately, I was not able to get to the meeting that was organised yesterday but, bearing in mind that previously the Government's stance has been not to go down the road of these amendments, it would be of some use if the Minister made it clear whether or not, in the light of what has been said in the debate, they are going to take any note of what does or does not emerge from what has happened in Scotland, which has already reduced the limit, and whether the Government themselves are going to initiate some sort of investigation into what the impact has been in Scotland. I think the Government's argument has been that any change should be based on hard evidence. That is one obvious source of hard evidence. It would be a bit disappointing if there was any indication by the Government that they are not actually going to pay very much notice to what does or does not happen in Scotland as a result of the reduction in the limit.

Baroness Williams of Trafford: My Lords, I thank my noble friend Lady Berridge for explaining the reasoning behind these amendments. I thank her and other noble Lords who came to the meeting yesterday and the one that I held—it seems like a few weeks ago, but it was probably about one week ago. I thank them for being so engaged in this issue.

Amendments 174 and 175 look to lower the drink-driving limit in England and Wales from 80 milligrams to 50 milligrams of alcohol per 100 millilitres of blood, and further to 20 milligrams for novice and probationary drivers. In responding to these amendments, I start by posing a question: what does the number 80 mean to noble Lords or, indeed, anyone who enjoys a drink? Can any noble Lord in this Chamber effortlessly equate it to pints of beer or glasses of wine, taking into account metabolic rate, age, weight and what one has eaten for lunch? I suggest that it is unlikely. Instead, I would like to think that noble Lords in the Chamber today are sensible enough to drink very little, or indeed nothing at all, before driving. Noble Lords and most of society are part of the silent, self-regulating majority that makes our roads in Britain among the safest in the world.

However, the evidence shows that it is precisely such individuals that these amendments would affect. Those unlikely to commit a drink-driving offence in the first place would be put off drinking at all. Meanwhile, no evidence exists to support the notion that reducing the limit would have any deterrent effect whatever on the most dangerous group of individuals. The noble Lord, Lord Brooke of Alverthorpe, alluded to the sick and selfish types—the high-level frequent offenders who flout the current limit and would pay little regard to a new one.

The fact is that the pattern of alcohol levels in drivers is practically the same in most countries, irrespective of their limits, and our police resources are not limitless. If we stretch enforcement activity over a wider cohort of drivers, we will effectively lower the chance of the most dangerous being caught and taken off our roads. I therefore suggest that a lower limit is likely to be counterproductive. Evidence showed that this is exactly what happened in the Republic of Ireland, where the death rate on the roads increased by about 17% when the limit was reduced several years ago. The number of drink-drive arrests stayed pretty much the same. Instead, it is the view of the Government that we must prioritise the targeting of the selfish, dangerous minority who cannot be deterred by a change in the law which they are, in any event, totally disregarding.

The drink-driving limit for England and Wales strikes an important balance between safety and personal freedom. By retaining the present limit, we are not

criminalising those who drink a small amount a long time before driving; we are pursuing the most dangerous individuals. Meanwhile, our advice remains unchanged: do not take the risk by driving after you have had a drink. I think we all share a common objective of wanting to see a reduction in the number of people killed and injured on our roads as a result of drink-driving. However, I put it to your Lordships that the most effective way to achieve this is not through these amendments but through the continued robust enforcement of the current law.

In response to my noble friend Lady Berridge and the noble Lord, Lord Rosser, we will review any new evidence that may emerge, including in relation to the change in the law in Scotland. We will naturally be interested in any reports produced by the Scottish Government or Police Scotland, or any other independent research. For the reasons I have set out, we remain unpersuaded of the case for changing the current drink-driving limit. We will, however, continue to look with interest at any new data or information emerging from Scotland. On that basis, I hope that my noble friend will withdraw her amendment.

Baroness Berridge: My Lords, I am grateful to noble Lords who supported this amendment and particularly to the noble Lord, Lord Paddick, for pointing out that this is an increasing problem, proportionately, within the number of deaths on our roads. I was not surprised to hear my noble friend the Minister refer to the enforcement point on which the Government rely in this matter. We must pay tribute to our police but the Police Federation supports a reduction in the alcohol limit. If that were the main solution and there would be no effect from this amendment, I do not think that the police would be asking for a reduction in the limit.

I was disappointed that my noble friend did not take on board the point that 60% of these accidents involve young people—I think that it rises to 80% in rural areas. These are not the selfish and dangerous drivers. Interpretation of the evidence is that this provision would have an effect, as the noble Baroness, Lady Hollins, outlined. We will always be left with a rump of people who disregard the law completely but the NICE study on this outlined that changing the limit down to 50 milligrams, or any change, would affect behaviour across the board.

I have to join with other noble Lords in saying that I am grateful to my noble friend the Minister for outlining that the advice is still, "Don't take the risk—don't drink and drive", because it was not what was outlined in the *Daily Mail* today, where the message was actually quite disturbing. I am also disturbed that my noble friend has not been able to outline any other action to try to reduce this trajectory of deaths, which has flat-lined at 240 a year for five years. No other solution is being put forward by the Government to say what they will do to trigger a decline in those deaths.

7.45 pm

I am grateful to my noble friend for saying that the Government will review any new evidence, including Scottish evidence. Regrettably, I conclude that now might not be quite the moment to review a limit put in place in our law in 1967. However, given the Private Member's Bill of the noble Lord, Lord Brooke, the movement is now against the Government. The momentum is building and, sadly, it will turn when one of the victims who I referred to feels that the criminal justice system has not come to their aid but it came to the aid of somebody in Scotland, where it is particularly persuasive to juries on causing death by careless driving if somebody is also over the legal limit for alcohol. It saddens me greatly that it might take that victim to come forward, having had that injustice, before we reduce the limit and have some kind of unity across the United Kingdom, but I beg leave to withdraw the amendment.

Amendment 174 withdrawn.

Amendment 175 not moved.

Amendment 176

Moved by ***Lord Moynihan***

176: After Clause 127, insert the following new Clause—

"National anti-doping provisions

(1) Subsections (2) and (3) apply to—

(a) all persons participating in sport in the United Kingdom who are members of a governing body of sport or an affiliate organisation or licensee of a governing body of sport, including national governing bodies of sport, regional governing bodies, sports associations, clubs, teams, associations or leagues (a "relevant body");

(b) all persons participating in such capacity in sporting events, competitions or other activities in the United Kingdom which are organised, convened, authorised or recognised by a relevant body;

(c) any other person participating in sport in the United Kingdom who, by virtue of a contractual arrangement or otherwise, is subject to the jurisdiction of a relevant body for the purposes of preventing doping; and

(d) any other person in the United Kingdom whether or not such a person is a citizen of, or resident in, the United Kingdom.

(2) An athlete is guilty of an offence if he or she—

(a) knowingly takes anywhere in the world a prohibited substance with the intention of enhancing his or her performance in any sports competition where there is a reward on offer, whether monetary or in terms of prestige, promotion or protection from relegation; or where that is one of his or her intentions; or

(b) has been banned or suspended from participation in any sporting activity, or has been or is a member of any organisation which has been banned or suspended from participation in any sporting activity anywhere in the world, at any time either before or after the day on which this Act is passed; and

(i) participates in any sports competition in the United Kingdom where there is a reward on offer, whether monetary or in terms of prestige, promotion or protection from relegation; and

(ii) does not have a prohibited substance certificate dated not more than 14 days earlier than the date of the sports competition at the commencement of the sports competition.

(3) In subsection (2) "prohibited substance certificate" means a certificate from a medical practitioner in the United Kingdom appointed by the General Medical

Council for the purpose of testing athletes for prohibited substances, confirming that in the practitioner's opinion—

(a) the athlete does not have any prohibited substance in his or her body, and

(b) the athlete's body does not retain any advantage in sporting performance by reason of the athlete having taken a prohibited substance at any time either before or after the day on which this Act is passed.

(4) A person in the United Kingdom is guilty of an offence if he or she, with the intention of enhancing the performance of an athlete, encourages, assists or hides awareness of an athlete taking a prohibited substance with the intention of enhancing the athlete's performance, or with that being one of the athlete's intentions.

(5) A medical professional commits an offence if, in the United Kingdom, he or she prescribes a prohibited substance to an athlete and believes, or ought reasonably to believe, that the substance will be used by the athlete with the intention of enhancing his or her performance, or if the professional fails to report any approach for a prohibited substance by such an athlete to the General Medical Council.

(6) A member of an organising committee is guilty of an offence if he or she has not taken all reasonable steps to ensure that all athletes permitted to compete in a World or European Championship which he or she is involved in organising, convening, or authorising—

(a) have not taken a prohibited substance with the intention of enhancing their performance; and

(b) have not been banned or suspended from participation in any sporting activity, or been a member of any organisation which has been banned or suspended from participation in any sporting activity anywhere in the world, during the two years prior to the World or European Championship.

(7) In subsection (6), "organising committee" means a Committee established in the United Kingdom on behalf of any international federation of sport, which is recognised by the International Olympic Committee.

(8) For the purposes of this section a "prohibited substance" is as defined by the World Anti-Doping Agency or such other agency as shall be designated by the Secretary of State for this purpose.

(9) Any person guilty of an offence under subsection (2), (4), (5) or (6) or shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding six months, or both; or

(b) on conviction on indictment, to a fine not exceeding the statutory maximum or imprisonment for a term not exceeding two years, or both.

(10) In order to assist with the prevention of offences under subsections (2), (4), (5) or (6), UK Anti-Doping shall discuss the following issues with the World Anti-Doping Agency annually—

(a) the effectiveness of Annex I of the International Standard for Testing and Investigations (athlete whereabouts requirements) and its harmonisation with the European Convention on Human Rights;

(b) the effectiveness of the international work of the World Anti-Doping Agency; and

(c) progress on the development of a United Kingdom roll-out of athlete biological passports.

(11) UK Anti-Doping shall submit the results of the annual discussions under subsection (10) to the Secretary of State, who shall—

(a) lay before both Houses of Parliament an annual report documenting—

(i) whether the athlete whereabouts requirements are effective in combating doping in the United Kingdom and are in compliance with the European Convention on Human Rights, and

(ii) the performance of the World Anti-Doping Agency in general in relation to its effectiveness in preventing offences under subsection (2), (4), (5) or (6); and

(b) determine whether the Government should remain a member of and continue to support the World Anti-Doping Agency, in the light of that effectiveness."

Lord Moynihan (Con): My Lords, when athletes choose to cross the doping line, they enter a dark and amoral underworld devoid of honesty, moral scruples and conscience. They are guilty of fraud, yet there is no sport-specific legislation in this country—unlike many other countries—to address fraud in sport. Indeed, there is no legal provision in this country's sport for the governance of and obligations on governing bodies of sport. There is no effective provision for the prevention of match-fixing, bribery and corruption. There is no mandatory responsibility on local authorities to provide for sporting facilities, and there are no national anti-doping provisions.

My Amendment 176 addresses those who knowingly defraud a clean athlete from selection or recognition in their professional career. In any other walk of life, that is a criminal act because it is fraud. Such fraud is criminal, yet there is no sports law in the United Kingdom and no effective remedy for fraud in sport—no way of tackling the stain on the integrity of sport. As I have said before, and outlined in my petition with the support of the *Sunday Times*, there is no redemption for the clean athlete denied selection or winnings by a competitor who knowingly cheats. What is worse, the cheat with the chance of a long-lasting benefit derived from an enchilada of performance-enhancing drugs knowingly shreds the dreams of clean athletes with every needle they inject.

That is why, saddened by the failure of international sports bodies, to which I will return, many countries—including New Zealand, Austria, Italy, France, Sweden, Mexico and China—have either criminalised the use of performance-enhancing drugs in sport or enacted legislation which criminalises those who traffic in these drugs. Germany is the most recent country to introduce legislation, proclaiming,

"a declaration of war on cheaters".

Under its law, athletes found guilty of doping face fines or prison terms of up to three years. Those involved in supplying athletes with performance-enhancing substances could face jail terms of up to 10 years. Yet we in the UK have delayed and failed to introduce long overdue sport-specific legislation.

Even the last director-general of the World Anti-Doping Agency reflected:

"I want to pose the question: should doping be a criminal matter? It is in Italy, and we think—some of us—that the real deterrent that cheating athletes fear is the fear of going to prison. Not the fear of being stood down from their sport for a year, two years, four years but a fear of going to prison".

He is right. Over many years, British Olympic athletes have taken the firm and uncompromising stance that those guilty of cheating should never again be selected to represent their country.

I have referred to the fact that the World Anti-Doping Agency has lost credibility, and I fear that it has. When the news of the endemic doping in Russia and the widespread doping in athletics was broken by the *Sunday Times* and the German state broadcaster ARD, the president of WADA said that WADA was "pleased" that the relationships with Russia,

"have survived much of the adverse publicity caused by the ARD television programs".

He further said that he,

"values the relationship with Minister Mutko",

and would be grateful if the Russian commissar who was reporting to him,

"will inform him that there is no intention in WADA to do anything to affect that relationship".

These relationships have no place in the corridors of what are meant to be independent organisations overseeing doping in sport. WADA has lost credibility, and that credibility will be restored only when its leaders are truly and wholly independent and not relying on those same countries for votes to enhance their careers, for example, in the International Olympic Committee.

My amendment introduces national anti-doping provisions and, as I said in Committee, criminalises doping by setting a very high legal bar whereby an athlete has knowingly to take the prohibited substance with the clear intention of enhancing his or her performance, or with that being one of the intentions. It is also a criminal offence if a person belonging to the entourage of the athlete—for example, managers, agents, coaches, doctors—or those promoting logistical support for the athlete's career encourage, assist or hide awareness of the relevant athlete taking a prohibited substance with the intention of enhancing such athlete's performance, or with that being one of the intentions, to the detriment of a clean athlete and, potentially, their earning power and their career.

That was the first and most important point that I set out in the proposed amendment. It is not intended to apply to those athletes who, undoubtedly by error or mistake, take a prohibited substance. It is very specific to those athletes who knowingly cheat by taking performance-enhancing drugs in order to deny a clean athlete selection or a career.

The second part of the amendment came out of an investigation undertaken by the *Sunday Times* with regard to a Dr Bonar. Dr Bonar was highlighted at that time as being beyond the jurisdiction of the United Kingdom anti-doping agency. UKAD itself called for the powers to ensure that, instead of just being able to apply sanctions to those doctors affiliated to governing bodies of sport, they could be used against any doctor who knowingly assisted an athlete who cheated—not just 1% or 2% of the doctors in this country but doctors such as Dr Bonar, who was engaged in activities set out clearly by the *Sunday Times*.

The third point the amendment covers is the fact that if you put a time limit on the effect of a drug in terms of the ban you have to face, the issue of how long the drug benefits the athlete is not taken into account whatever. The key issue is that it is the athlete's body that potentially retains an advantage in sporting performance long beyond, say, a two, three or four-year ban. For example, if a young person is knowingly engaged in cheating at age 16, 17 or 18 and takes growth hormones—or if I had and turned out to be six feet tall, there is little possibility that I would have suddenly shrunk back to 5'6" when I was 30 or 35; I would have had a lasting benefit from those drugs. It is important that that distinction is clear, and any athlete who has faced a ban would need to satisfy the medical profession—an independent doctor appointed by the GMC—that they have no long-lasting benefit beyond the time of their ban.

The amendment proposes that a member of an organising committee of a world or European championship would be guilty of an offence if they did not take all reasonable steps to ensure that the athletes they are entering for the world athletics championships, for example, next year in London, were clean. They could do that by working with the World Anti-Doping Agency.

I have been very grateful to the Opposition, not least in the other place, who have consistently supported taking action of the form that I have outlined. I think I can do no better than quote the shadow Home Secretary, Andy Burnham—I mentioned this at an earlier stage but I think it is worthy of repetition—who stated:

"People need to be able to trust that what they are seeing on the pitch, on the track or in the pool is real endeavour and not artificially enhanced. If you are using performance-enhancing drugs, you are not just cheating the other athletes but you are perpetrating a fraud against the paying public. For that reason, there is a clear case for it to be a criminal offence. We must send the strongest possible message that it will not be tolerated in sport"—

This is a message which is being considered in detail by many other parliaments in the world, leading to legislation to criminalise the worst excesses—and only the worst excesses—of doping in sport.

I conclude by setting out very briefly who the victims are, because there are those who argue that this is a victimless crime. It is not. The first group of victims are the drug cheats themselves, those young athletes who, pushed to the limits by their ambition and their desire for success and its accompanying financial rewards, are driven to the most desperate of measures and the most dangerous of misjudgments. They not only pay for their use of unregulated, uncontrolled and often untested and unsafe drugs with the heart-breaking penalty of a one-, two- or four-year ban; it is, and has been, far worse. Doping can cost them their very lives. There should be no mistake or misunderstanding: doping in sport is dangerous and the cost of gaining a small competitive advantage can be tragically and prohibitively high. That is, of course, the nightmare scenario, and death by doping is at the far end of the spectrum. But while athletes remain tempted by the huge short-term gains from doping—for example, heightened oxygen-carrying capacity from the use of EPO—there will always be terrible risks. The public never see this most distressing side of doping, and the athlete who dopes either does not know about or chooses to ignore the long-term health problems from such drug use, including greatly increased risks of heart attack or stroke.

The second group of victims are the clean athletes, and it is they whose rights are most at risk of being trampled over by the absence of criminalisation on the

[LORD MOYNIHAN]
statute book. The secret drugs cheats have already callously and deliberately sought to gain selection over another athlete by taking banned performance-enhancing drugs, thereby greatly wronging and defrauding the athlete who has made the decision to stay clean and to live and train by the rules that govern sport. Honest would-be champions suffer when the chance to fulfil their ambitions is stolen from them, when Olympic medals are snatched from their grasp and when they are robbed not just of sporting glory but of all the associated commercial awards. They are cheated out of medals, recognition, sponsorship and everything that comes with being a top sports man or woman. Those innocent athletes—foot soldiers in the fight against doping—make the sacrifices they do in good faith because they believe wholeheartedly in the importance of clean sport. We do not know if a drug cheat can ever be considered clean again; but banned athletes can still train, and, even clean, they can maintain their strength, as I outlined earlier, through doping.

The third group of victims are the legions of loyal sports fans. Sporting events can mobilise the interests and emotions of millions around the globe. From the world of sport emerge national heroes, national institutions, national treasures—legends and heroes are created from sport, particularly Olympic sport, which has a unique place in the hearts and minds of the public. Fans are understandably let down when the athletes whose feats of athleticism they celebrate are exposed as drug cheats and their achievements nullified. Fans expect the Olympic Games to operate on a higher level than any other sporting event, and while it may be vulnerable to legal challenge, there is a certain sense of natural justice in the concept of criminalisation for drug cheats.

Fourthly, the victims are the Olympic Games themselves. Despite their immense success as the biggest sporting event on the planet, the Olympics still epitomise all that is good about sport and encapsulate a distillation of its very essence. The joy found in effort is taken to a new level as athletes stretch themselves to the limits of human physical ability in their quest for "citius, altius, fortius", breaking records as they go. But the Olympic dream vanishes rapidly if the achievements won by that effort are found to be chemically enhanced and available from the nearest steroid shot.

The final victim of the drugs cheat is sport itself. I firmly believe, and have all my life, that sport is a force for good—a cultural phenomenon that transcends pure entertainment. In its purest form it is a triumph of the human spirit. It is not too far-fetched to say that the timeless and essential qualities of self-discipline, selflessness, fortitude and endurance that the best of sport inspires serve to make the world a better place. The narrative sport adds to our lives is enriching. Sporting metaphors and analogies crowd the modern lexicon. It is not for nothing that we speak of good and bad sportsmanship. The enduring, influential, pervasive power of sport in all cultures should not be underestimated.

Yet, the power of sport is undermined by cheating. It is undermined by those who defraud fellow athletes out of a living and out of selection. Its values are then tarnished, its universal language of fairness, honesty and respect silenced. That is why I believe it is so important that we follow the examples of not just one or two but many countries of the world in recognising that we now need finally to criminalise the worst excesses of doping in sport. I beg to move.

8 pm

Lord Kerr of Kinlochard (CB): The noble Lord speaks with passion and from great knowledge of this matter. I defer to that. I am nervous about intervening because we are in the presence of a former captain of the Olympic team, the noble Lord, Lord Campbell of Pittenweem. I support the intention behind the amendment, but I wonder whether something has not gone wrong in the drafting. The problem arises because the last word in subsection (2)(a) of the proposed new clause is "or", which means the language in paragraphs (a) and (b) is not cumulative, but alternative.

Proposed new subsection (2)(a) defines the offence of taking a prohibited substance. Proposed new subsection (2)(b) never mentions prohibited substances. Its scope looks astonishingly wide. It says that if an individual,

"has been banned or suspended from participation in any sporting activity, or has been or is a member of any organisation which has been banned or suspended from participation in any sporting activity anywhere in the world, at any time",

he is committing an offence. Change sports and assume we are talking about football. A footballer who is red-carded is banned for playing for a few matches. In the terms of proposed new subsection (2)(b)(ii) he would be required for the rest of his career to present at least every fortnight a certificate saying he was free of any banned substance. Proposed new subsection (2)(b) does not talk about drugs at all. It says that if a club or sporting organisation was banned for corruption, its financial affairs, a betting offence or any kind of offence, that club, all its players and all those who had played for it in the past would be required to obtain this certificate every two weeks. The same would apply to individuals banned for reasons that had nothing to do with drugs.

I support the intention behind the amendment, but I do not think the wording is quite right.

Lord Addington (LD): My Lords, I too support the noble Lord's intention. I have a less subtle criticism of the wording. It refers to "prestige", "promotion" and "relegation". The noble Lord has stated very clearly that he is going for the elite. However, promotion and relegation run the whole way through all our sport. I am sure that the noble Lord was not worrying about the eastern counties division north rugby, shall we say, but it would be caught by this at the moment.

It should not be down to a Back-Bencher, even one as distinguished as the noble Lord, Lord Moynihan, to be doing this. It should be taken on by the Government. There is a will to do this correctly with the Government. When the Minister replies to the noble Lord, I hope that she will let us know what the Government are doing. That is what is required. We can thank the noble Lord for opening this up. It is down to the Government to take coherent action to make sure this is happening, I hope, with other nations. As the noble Lord pointed out, they are taking their own action. If we can act together, we will be able to do more.

I applaud what the noble Lord is trying to do. I say for a fact that he has probably made far fewer mistakes than I would if I had tried to do this. Indeed, that is a fairly safe bet. I think he has missed on this, but to open up the argument and get into it he has done us a service. We have to make sure we take some action soon. Whatever else has gone before has not worked. "If it ain't broke, don't fix it" clearly does not apply here.

Lord Campbell of Pittenweem: My Lords, I shall not endeavour to emulate the comprehensive approach of the noble Lord, Lord Moynihan. I will permit myself one observation: if he had been allowed a growth hormone, it is unlikely he would have been the cox of a successful, gold-medal winning Olympic eight for Great Britain. He may think that, all things considered, at least from a sporting point of view, he did the better out of the bargain.

I too am sympathetic to the purpose of the amendment. I propose to put it into historical context, perhaps from the rather narrow prism of my sport, athletics. It is almost certainly the case that the last clean Olympic Games of the modern series were the Games held in Rome in 1960. By 1964 there was anecdotal evidence, from which inferences could be drawn, that in eastern Europe there was systematic doping of track and field athletes. It became increasingly clear that that was at its height under the East German Government. As an effort to attract some privilege and prestige, it was clear that athletes in East Germany who sought to achieve the highest levels were not able to do so unless they succumbed to the programme of doping.

That had long-term effects. There is at least one noted case of a female swimmer who was subject to anabolic steroids to such an extent that her female characteristics were so badly damaged that, to regularise herself and her role in society, she transitioned from female to male. That is a clear illustration not only of the power of doping, but equally that the ingestion of drugs for performance-enhancing purposes can bring with it quite extraordinary personality and other penalties.

I am talking about anabolic steroids, which were the drugs of preference in the times I describe, but more sophisticated performance-enhancing methods are available. There are those who argue that we are engaged in a battle between the chemists in the laboratories and the investigators, with the chemists, often having greater resources and no inhibitions, having the opportunity to create circumstances which make it very difficult for the investigators to get to the truth of what is going on.

In my own sport, professionalism has now replaced the sham amateurism of the 1960s, but with that has come the opportunity for quite substantial rewards. I do not regret being an amateur, nor do I have any regret for those who are now professionals. If you are as good a professional athlete as you might be a barrister, then why should you not take full advantage of those qualities? However, as a result of that professionalism, the rewards have become quite extraordinary, far beyond the riches of Croesus that were imagined but never achieved in my time.

I shall make one confession: I suppose I broke the amateur rules once because at North Berwick at an August bank holiday meeting I was given £5 more than my legitimate expenses, and it is perhaps a measure of the time that I thought that was actually a pretty good deal. I was so heavily handicapped in the 100 yards that the local boy won by a street and a half. As I walked out, there was a notice which said "No betting allowed", and a man took a swing at me, saying, "You weren't trying", so I suppose even in those days of what we thought was purity, there were other considerations.

I shall return to the main thrust of what I am trying to say. It is this—and here I echo what the noble Lord, Lord Moynihan, said—a two-year ban or a four-year ban is as nothing because if they did amount to something, there would not be so many repeat offenders. People are allowed back into international sport who take the same risk and are found to have been in breach yet again. There is an issue here because the courts have traditionally been reluctant to accept the notion that the authorities can impose lifetime bans because, now that sport is professional, that has an impact on the patrimonial interest of the individual. On one view, it is preventing the individual following what is essentially his or her occupation.

The noble Lord catalogued a series of adverse consequences. Let me put a slight gloss on that and add some of my own, albeit they are expressed in a manner similar to his. The first is the damage to health and personality, to which I have already referred. The second is the undermining of the integrity of sport in a way which is almost incomprehensible. The third, as he made clear, is the unfairness to other athletes who are competing without performance-enhancing assistance. The fourth, which I do not think he mentioned, is that a culture grows up in which young, promising athletes are led to believe that the only way in which they can achieve the highest pinnacle of success is to indulge in drugs of this kind. From my membership of the Court of Arbitration for Sport I know of at least one case where it was perfectly clear beyond any question that it was not the young person but the young person's ambitious parent. If you take these consequences, or features, of what we are talking about and add them to the comprehensive account given by the noble Lord, it seems to me that the case for my noble friend's plea that this is something for our Government to begin to take seriously and to produce proposals to deal with is overwhelming.

8.15 pm

Lord Rosser: The noble Lord, Lord Moynihan, referred to Her Majesty's Opposition. I make it clear to him that he continues to have our full support in his objectives and in the amendment that he has tabled. There is certainly no change on that score. As he said, prohibited substances are taken to gain an advantage in sport over fellow competitors. They are taken to produce a false result that is not determined purely and solely by the unaided skill and effort of each competitor but one that will, at the very least, be influenced or, at worst, determined by the taking of a substance which improves performance and creates one unrelated to the skill or effort of the competitor concerned. It is a form of fraud. It is cheating not just fellow competitors but the public, who pay to come to watch the sporting event in the belief that they will see a fair competition with competitors competing on a

[LORD ROSSER]
level playing field. As the noble Lord, Lord Moynihan, pointed out, in recent years many countries have criminalised the use of performance-enhancing drugs in sport or enacted legislation that criminalises the trafficking of such drugs.

I am curtailing what I had intended to say, but I want to refer briefly to the Government's response in Committee. The Minister said that,

"the Government believe that rather than tackling this through legislation, it should be a matter for sports bodies".

That statement appears to indicate that the Government would never favour making a criminal offence, as provided for in this amendment. However, as the noble Lord, Lord Moynihan, said in Committee, one cannot say that leaving this to sports bodies has exactly been a staggering success up to now. It is precisely because it has not been a staggering success that we have the problem we do. As the noble Lord, Lord Moynihan, pointed out, a number of other nations have legislated. As he also pointed out, he has taken the example of the Germans, the Italians and the Dutch, who have focused on the fact—this is crucial—that it is not just the athlete but the entourage who need to be criminalised. It is the entourage we have to make sure we—to put it bluntly—get at because they are at the heart of the problem at least as much as the athlete. The noble Lord also indicated that the deterrent effect in those countries of putting legislation on the statute book has already been effective.

That is why I come back to the response that we got from the Government in Committee. We got a clear statement that,

"the Government believe that rather than tackling this through legislation, it should be a matter for sports bodies".

Having said that, the Minister went on to say:

"In order to have that evidence base, the Department for Culture, Media and Sport is currently conducting a cross-government review of the existing anti-doping legislative framework and assessing whether stronger criminal sanctions are required".—[*Official Report*, 9/11/16; col. 1240.]

If you want to give a clear indication of the direction in which you wish to go, how can you say at one moment that the Government believe that, rather than tackling this through legislation, it should be a matter for sports bodies and then, a little later in the same speech, say that a review is taking place to assess whether stronger criminal sanctions are required and that the review is expected to be published before the end of the year?

In giving their response, I hope that the Government will at least clarify whether they believe this is a matter that should be left to sports bodies or whether they accept that there may well be a need for criminal sanctions and going down the road of criminal offences, which is a key part of the amendment that the noble Lord, Lord Moynihan, has tabled. There is not much point in talking about a review if the Government have already made up their mind—as one could interpret from the speech in Committee—that this is a matter for the sports bodies and not the law. I hope, however, that the Government will make clear that they accept that criminal sanctions and the creation of new criminal offences may well be needed to address this problem, as the noble Lord, Lord Moynihan, said in his comments on his amendment.

Baroness Chisholm of Owlpen: My Lords, it is a great honour to be in the presence of two such world-renowned athletes. Their Lordships look so well that it has certainly given me great inspiration to go back to the gym as soon as possible.

I am grateful to my noble friend Lord Moynihan for again raising the important issue of tackling doping in sport. As the House will be aware, the Government are reviewing the issue of criminalisation. The review is now in its final stages and we hope we will soon be in a position to publish. In finalising the report, we will naturally want to take into account the views expressed by noble Lords in this debate.

Anti-doping is a technical area and it is important to stress here that undertaking a review requires a comprehensive evidence base before considering any possible legislative options. The Government are very much alive to the issues and are actively examining what more can be done to enhance our national approach to doping, including the possibility of criminal sanctions, to uphold the highest standards of integrity in sport. We recognise that the desire to dope can be driven financially, and financial penalties are likely to be as damaging to those who cheat as a ban. Until now the Government's view has been that, rather than through legislation, this should be a matter for sports bodies to sanction. The central question for the current review, however, is whether this approach still holds good.

It is important to underline that serious doping is already covered under existing domestic criminal legislation. Under the Misuse of Drugs Act 1971 and the Medicines Act 1968, the trafficking and supply of many doping substances is a criminal offence, carrying a penalty of up to 14 years' imprisonment. Tough sanctions are also already in place via the 2015 *World Anti-Doping Code*. The code includes automatic four-year bans for drug cheats and support staff who are found guilty of doping. Such a ban forms a significant part of an athlete's relatively short career, and it would also mean they would miss an Olympic Games cycle.

The Sports Minister, Tracey Crouch, is member of the foundation board of the World Anti-Doping Agency and attended its November meeting, where there was acknowledgement from foundation board members that the current code would be subject to further revision in the near future. There was also a call to revisit the discussion around athletes convicted of doping offences being banned from the Olympic Games.

The Government remain committed to tackling doping in sport and we will continue to work with UK Anti-Doping and our sport stakeholders to ensure that our athletes can compete in a clean sport environment. If the evidence is clear that stronger sanctions are needed, we will take action. There is a process in train—indeed, nearing completion—to ascertain whether the evidence points in the direction advocated by my noble friend. I therefore respectfully suggest to him that until we have completed the review, it would be premature to legislate on this matter in the manner proposed in this amendment. My noble friend has

suggested that the Government instead pursue a different course by taking a power to implement the review's findings through regulations. This is a tempting offer, but I still believe that would be putting the cart before the horse, and the House and the Delegated Powers Committee would rightly chastise the Government for legislating on an important area of public policy through a wide-ranging delegated power.

I recognise that my noble friend has been pursuing this issue for a great many years. I think he suggested that the leadership of WADA is conflicted and that independence is needed. At the most recent meeting of the World Anti-Doping Agency governing foundation board, approval was given for a review of WADA's governance. Furthermore, there will also be a review on non-compliance sanctions. As a regulator, WADA needs teeth, and we are supportive of such an approach. I understand my noble friend's frustration; none the less I hope he will bear with us for a little while longer. The Minister for Sport, Tracey Crouch, would be very pleased to meet my noble friend next week. In the meantime, I hope he will agree to withdraw his amendment.

Lord Moynihan: I am grateful to all noble Lords who took part in this debate. I hope it is not too mischievous to point out that over the last 30 years—I think it is about 30 years since I was Minister for Sport and had the first review of this matter—we have had a whole range of reviews. I welcome that Tracey Crouch announced a further review nearly a year ago, but it is unfortunate that the timing of its publication may be a matter of a couple of days after Third Reading of the Bill and thus preclude the opportunity for us to consider it and reflect it in the legislation.

I will very briefly respond to questions or comments that were made in the debate. In response to the noble Lord, Lord Kerr, I accept that improvements could be made to the wording of the amendment. I had hoped that my noble friend the Minister would have accepted that we were heading in the right direction, and taken it away with me and the likes of the noble Lord, Lord Kerr, to improve the wording before we got to the next stage, but sadly that was not to be this evening.

I stand second to none in recognising that over many decades the noble Lord, Lord Campbell, has not only been a pioneer but led the campaign to criminalise the worst excesses of doping, and his speech bore testimony to that. He said some very kind things, along with a slightly naughty reference to the benefit that I had from not taking growth hormones—diuretics would have been more appropriate for me, to keep my weight down in the coxswain seat. However, he is wrong on one point: very sadly I did not return from Moscow with a gold medal, but with a silver medal. I have subsequently learned that many of the athletes competing in that regatta were not only on drugs but subsequently sued the German Government for the damage to their health. They won and retained their gold medals. Such is the policy pursued by the International Olympic Committee on 20th-century gold medallists.

I echo what the noble Lord, Lord Addington, who was concerned about the wider application, said. Again, that could have been covered in an improvement to the amendment, but I recognise the point that he made. However, the amendment did not find favour with the Government at this stage and we may not have that opportunity.

I hold out hope that many of the points that the noble Lord, Lord Rosser, made will continue to reflect the position of his party. He has personally given a lot of support on this and shown interest in it during the passage of the Bill, and I am very grateful to him, as I am to the noble Lords on the Front Bench opposite, both of whom have been regularly in touch with me on the subject. It is a pity that the Government have focused on the review as the cornerstone of the reason why we should not be moving ahead now. I genuinely believe we have an outstanding set of Ministers in the DCMS. Karen Bradley and Tracey Crouch in particular have done a lot of very good work in this direction, and I do not think I would be speaking out of turn to say that I have heard them on a number of occasions at least put forward the benefits of considering the criminalisation of doping in sport. I hope therefore that the Government will be open-minded in their review on returning to this subject. There is a momentum, both internationally and nationally, towards legislation on this subject, and that momentum needs to continue. Thanks to the noble Lords who participated in a series of debates, it is continuing in the right direction in your Lordships' House.

In closing my remarks, I very much hope that that the Minister will convey to her colleagues what she has said about the importance of the review and that they will seriously take it on board. In addition, I hope that an early opportunity will be found for your Lordships' House to consider the findings of that review and to discuss this in more detail, including the possibility of finding an opportunity to legislate—if that is the wish of your Lordships—at a future stage. However, I recognise that we need to look at the review, take it into account and wait on its publication. With something of a heavy heart, after campaigning for this for some 30 years, ever since the first summit in Copenhagen, when I was Minister in 1987, I beg leave to withdraw the amendment.

Amendment 176 withdrawn.

Clause 132: Monetary penalties: procedural rights

Amendment 177

Moved by ***Baroness Chisholm of Owlpen***

177: Clause 132, page 152, line 8, at end insert—

"(5A) If on a review under subsection (4) the Minister decides to uphold the Treasury's decision to impose the penalty and its amount, or to uphold the Treasury's decision to impose the penalty but to substitute a different amount, the person may appeal (on any ground) to the Upper Tribunal.

(5B) On an appeal under subsection (5A), the Upper Tribunal may quash the Minister's decision and if it does so may—

(a) quash the Treasury's decision to impose the penalty;

(b) uphold that decision but substitute a different amount for the amount determined by the Treasury (or, in a case where the Minister substituted a different amount, by the Minister)."

Baroness Chisholm of Owlpen: My Lords, financial sanctions are an important foreign policy and national security tool. Their effective implementation and enforcement are vital to their success. In order to ensure that financial sanctions enforcement is appropriately targeted and proportionate, it is important that a range of alternative enforcement options are available, such as the monetary penalties provided for in Part 8 of the Bill.

The permitted maximum penalty is set at the level of £1 million or 50% of the value of the breach. This level is considered to be adequate to disgorge profits made from financial sanctions evasion and provide a sufficient incentive to improve future compliance in cases where prosecution is not warranted.

In its current form, the Bill states that a decision to impose a civil monetary penalty will be made by the Treasury, and the person upon whom a monetary penalty is imposed has the right to request a review of the decision by a Minister in person. The Minister may uphold the decision and the amount of the penalty, uphold the decision but change the amount of the penalty, or cancel the decision. The Bill does not currently provide the individual with any right of appeal, although both the decision of the Treasury and that of the reviewing Minister are within the scope of a judicial review application. Following further consideration, however, we have concluded that it would be appropriate to provide for a right of appeal to the Upper Tribunal, and Amendment 177 amends the Bill accordingly. Such an appeal route will ensure that there can be a full-merits hearing on points of law and fact, whereas a judicial review hearing in the High Court can examine only points of law.

Amendments 178 and 179 address a separate point. Clause 141 permits the Treasury to extend temporary sanctions regimes and temporary designations to the Crown dependencies and the British Overseas Territories, to ensure that financial sanctions take effect in these territories "without delay", as required by the resolutions of the United Nations Security Council. However, we have always been clear that the power will not be used in respect of any territory that takes its own measures to apply financial sanctions without delay. In recent weeks the Government of Jersey have taken their own legislative steps to implement sanctions without delay. That being the case, the Government of Jersey have requested that reference to them be omitted from Clause 141. Amendments 178 and 179 give effect to that request. Of course if any other Crown dependency or overseas territory takes similar steps to Jersey, the power in the clause will not be used in relation to that territory. However, as the other territories have not yet done so, it is prudent to retain them in scope for the time being. I beg to move.

Amendment 177 agreed.

Amendments 178 and 179

Moved by ***Baroness Chisholm of Owlpen***

178: Clause 141, page 158, line 29, leave out "any of the Channel Islands" and insert "the Bailiwick of Guernsey"

179: Clause 141, page 158, line 35, leave out "any of the Channel Islands" and insert "the Bailiwick of Guernsey"

Amendments 178 and 179 agreed.

Consideration on Report adjourned.

National Citizen Service Bill [HL]

Report

8.32 pm

Clause 1: National Citizen Service Trust

Amendment 1

Moved by ***Lord Blunkett***

1: Clause 1, page 1, line 5, leave out "with" and insert—

"(1A) The NCS Trust is to consist of—

(a) the chair,

(b) the chief executive, and

(c) at least 8, but not more than 10, other members.

(1B) The chair and the members within subsection (1A)(c) are referred to in this section as the non-executive members.

(1C) The Royal Charter which establishes the NCS Trust under subsection (1) must provide for the establishment of a remuneration committee.

(1D) The Royal Charter which establishes the NCS Trust under subsection (1) must—

(a) require that the appointment of the chair is made on a recommendation from the Prime Minister which results from an appointment process which complies with the requirements set out by the Office of the Commissioner for Public Appointments;

(b) require that the non-executive members of the NCS Trust, other than the chair, are appointed by the chair of the NCS Trust after a fair, open and merit-based competition under criteria agreed by the Prime Minister and subject to his or her approval; and

(c) provide that none of the members of the NCS Trust shall be representatives of Her Majesty's Government, but that a representative of Her Majesty's Government shall be permitted to sit on the remuneration committee established in accordance with subsection (1C).

(1E) The NCS Trust has"

Lord Blunkett (Lab): My Lords, I will not detain the House for very long. In moving the amendment in my name and those of my noble friend Lord Stevenson and the noble Lord, Lord Maude, I want to put on record my appreciation and thanks to the Minister for his considerable courtesy and his preparedness to listen and have a dialogue with his own ministerial colleagues in relation to this and other amendments today. In passing, although this is not a gripe against the Minister in any way, it is unfortunate that his noble friends who are responsible for business have not heard of something called the "dinner break", which neither is a dinner break nor allows people to have dinner.

I shall try to set an example and be brief because we debated this at Second Reading and we debated the issues at length in Committee. There was considerable consensus that it would be right to allow the Government

to have a nominee, which would fulfil the objectives that the Government laid out in relation to the remuneration to be offered to staff working on the National Citizen Service and, subsequently—I agree with this—on the audit and risk committee in relation to avoiding the misuse of substantial sums of public money. It is in that spirit that I move the amendment. Again, I recognise the care with which the Government, in the form of the Minister, have been prepared to respond to this and to my noble friends on other amendments on the Marshalled List today. This would mean a fair, open and merit-based competition for non-executives and the ability of the Government to get their own way in terms of having a nominee on the committees of the NCS, but would not place the National Citizen Service in the erroneous position of being seen by families, young people and providers as presenting a government scheme determined, directed and therefore shaped by the Government, rather than the actual position of the NCS.

In the debate on Monday on the size, shape and nature of this House the noble Baroness, Lady Stowell, said that it was at its best when dealing with—I paraphrase—non-controversial legislation. I hope that I will be able to say on Third Reading that the House has been at its best in shaping this non-controversial legislation in the interests not of the Government or Opposition, but of young people. I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, I shall speak very briefly in support of the amendment, to which I have added my name. Its purpose is to encourage the Government to bring forward some firm plans on how to address some of the points raised in Committee by the noble Lords, Lord Blunkett and Lord Maude, and others, who were firmly of the view that the Government had got it slightly wrong in terms of its overall structure—so much so that it would put people off from joining the NCS, which would be a bad thing. I hope to hear proposals from the Minister that might resolve that problem.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, I am grateful for the kind words of the noble Lord, Lord Blunkett, and I thank the noble Lord, Lord Stevenson, for his brief remarks. I am thankful to both of them for making themselves available for meetings to discuss this, and I think we can agree a way forward.

We must, I believe, strike a balance. On the one hand we agree that we must give the organisation all the independence we can. It needs freedom to innovate, maintain its strong brand among young people and forge its own path. Young people must not feel the NCS is something that government does to them; they must want to go on it. At the same time, the Government have a duty to protect public money. Unsatisfactory or wasteful use of public money could kill the programme as surely as too close an association with the Government.

The noble Lord, Lord Blunkett, made a helpful suggestion in Committee for how we might strike this balance. He suggests that we do not have a government representative on the board but that a government representative is involved where appropriate and necessary for the Government to exercise oversight.

The provisions on the government representative are in the charter, so I can commit to amending article 5 to remove the requirement for a government representative on the board. All board members will be appointed through a transparent and open process in line with OCPA procedures. Article 8 of the charter will retain the existing provision for a government representative on the remuneration committee of the organisation. As article 5 will no longer include the government representative, article 8 will be amended to state that the government representative is to be appointed by the Secretary of State in consultation with the chair. The government representative will have to approve the pay policy—not individual awards—of the trust, as included in the current draft. A sponsoring department always needs to have the ability to approve pay policy, in accordance with *Managing Public Money*.

We will also add an additional article to the charter. This will specify that there must be an audit and risk committee and that there must be a government representative on that committee. We want to be ambitious for the NCS and this necessarily means that the trust will handle a significant amount of public money. To fulfil its responsibilities towards public money, the Government need to be satisfied that the right procedures to manage that money are in place. We must also ensure that all board appointments meet the high standards expected of public appointees. The Prime Minister is responsible for recommending appointments to the Queen, and the Secretary of State will ensure an appropriate level of government involvement in the recruitment process, including government representation on recruitment panels for board members, in line with the code of practice for ministerial appointments to public bodies.

Together these measures will ensure sufficient government oversight, while allowing the NCS the freedom to have an independent board to lead the organisation. I hope that, with these commitments to amend the royal charter, the noble Lord will withdraw the amendment.

Lord Blunkett: My Lords, I ought to have declared an interest as I did at Second Reading and in Committee as a non-remunerated member of the NCS board. I am grateful to the Minister and I consequently beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Baroness Royall of Blaisdon***

2: Clause 1, page 1, line 6, at end insert ", which are to be carried out with due concern for any impact on existing voluntary youth provision"

Baroness Royall of Blaisdon (Lab): My Lords, in moving Amendment 2, I shall speak to Amendment 4. I am also grateful to the Minister and the Bill team for their co-operation throughout this Bill.

I am delighted by the level of support that the NCS enjoys cross-party and throughout the sector. Even when legitimate concerns have been expressed, few

[Baroness Royall of Blaisdon]
argue that investing in the development of young people at such a formative age is the wrong thing to do. Ministers and the trust must and should be congratulated on their determination to make this new service succeed: to broaden horizons; instil confidence; change lives and benefit society. However, we must remember that what we are discussing is not just how the NCS operates in the here and now, but for the years to come. We are creating something very special in a royal charter body and we hope that it will be enduring. Therefore we have to future-proof it.

Noble Lords will recognise the intention behind my amendments from my previous interventions at Second Reading and in Committee. I have consistently made the point that, with such substantial public investment at a time when funding for local youth provision is in terminal decline, there is a real risk that the presence of the NCS skews the environment for existing youth provision. We want the NCS to be a key feature of a healthy youth sector. It is not, and will never be, the only means of helping young people to develop and give back to their communities. I am not suggesting that the Government or anyone else think otherwise. My amendments should be taken not as a criticism but rather as a common-sense assurance that the trust, which relies solely on public funding, will not find itself undermining existing youth provision that already delivers on the stated outcomes of the National Citizen Service.

I listened carefully to the legitimate concerns of the Minster and fellow Peers during Second Reading and in Committee. My previous interventions called for additional reporting, something that I do not believe unreasonable, but I understand the reticence with regard to additional bureaucracy. I have asserted that the trust must have a duty to support existing provision that delivers on similar aims. Again, I do not think that that is unreasonable, but I hear the concerns that that could move towards an infrastructure body approach for the trust, which is not my intention.

8.45 pm

My modest amendment does nothing more than caveat the proposed purposes of the trust so that it undertakes the promotion and delivery of the NCS while aware of the impact it is having on existing youth provision. It does not create additional reporting responsibilities, does not extend the jurisdiction of the trust and does not change its proposed activities. What it does is to ensure that there are moments within the governance and operation of the trust to reflect on how its presence has impacted on existing youth provision and if there is anything to be learned as a result. It would send a clear message to the wider youth and voluntary sector that the Government do not intend for a state intervention to impact detrimentally on existing community provision. When the National Council for Voluntary Organisations raises such concerns, as it has done, I think that we should listen.

Amendment 4 is slightly more ambitious. It would create an additional purpose for the trust in that it would champion a coherent youth social action journey for young people, which by its nature would ensure that the governance of the trust was wary of taking any action that undermined the provision that contributed to such a journey. It is a principle to which I know that the trust, the Minister and the Government already subscribe. Amendment 4 does not add to the bureaucracy, jurisdiction or activities that the trust currently undertakes but in principle and in practice it would strengthen the Bill, increase trust in the NCS, and allow the Minister to demonstrate that the Government's investment is all about ships rising and not a programme to be prioritised above all others.

While mentioning the journey, I ask the Minister whether he can update me with regard to progress on an announcement of an independent review into full-time social action. The need for recognition by the Government of legal status grows by the day. If he cannot give me good news today, I hope that he will be able to at some stage before Third Reading. I beg to move.

The Earl of Listowel (CB): My Lords, I support Amendment 2 from the noble Baroness, Lady Royall, to which I have added my name. It provides an important protection to avoiding any inadvertent damage to the very important charities working in the youth area.

In Committee, I drew the attention of your Lordships to the recent research into the impact of the Scout Movement on the mental health of adults; a significant difference in the mental health of adults has been demonstrated in research recently. As vice-chair for the All-Party Parliamentary Group for Looked after Children and Care Leavers, I am very well aware of the chaotic lives that too many of our children experience. Yesterday with Gracia McGrath, the chief executive of Chance UK, a mentoring organisation working with primary school children, often those with behavioural difficulties, I discussed the experience of too many children in this country. They may not have a table at home at which they can sit down for meals together; there may be very poor communication in the family, and no consistency about rules. A parent may say, "I will punish you for doing so and so", and then the child will not get punished but will then find themselves being punished all of a sudden for something that they know no reason for. Often there is violence in the home; that kind of violence becomes normalised, and when such children go to school they find it hard to make friends, because friends do not understand when they get hit all of a sudden for no reason. I remember working with an eight year-old Traveller boy many years ago, blond and blue-eyed and much younger than the other group of four boys with whom I was working at the time. He was full of obscenities, hitting me and the others, but in an affectionate sort of way; it was the only way in which he really knew how to communicate affection towards us.

Going back to my discussion yesterday, Gracia McGrath talked about how she started to help these children, mentoring five to 11 year-olds and how she would often encourage them to join the scouts or cadets. There they would get the solution that they needed, a sense of purpose, a set of rules, maybe a father figure, and a uniform that they could be proud of. So I strongly support the noble Baroness's amendment. The NCS is a giant already and is going to be even greater; we must take every precaution that it does not inadvertently disturb the delicate ecosystem of youth

charities working in the area already. I hope that the Minister can accept this amendment and I look forward to his reply.

Baroness Barker (LD): My Lords, Amendment 8 in this group stands in my name. The noble Lord, Lord Blunkett, said that this legislation was not controversial. The purpose and aim of this legislation is not controversial; there is agreement that the outputs such as those the NCS exists to deliver are ones that we all welcome. However, as I said at Second Reading, the decision to make this organisation permanent, to make it a royal charter body and to invest so much money in it is highly controversial. What this House has done, or what we have certainly tried to do from these Benches, is to draw to your Lordships' attention the very many flaws within the basic design of this legislation and in its detail. We do so because we have seen in recent memory programmes of this kind, such as the Work Programme, fail to deliver in their own terms as well as doing damage to the rest of the sector.

I know that, on the one hand, the Minister wants to establish the NCS as a body that is completely insulated and isolated from the rest of the voluntary sector, not bound by the same rules and accounting obligations. On the other hand, he has to accept that if the NCS as a commissioning body is to deliver on its objectives, it will have to work very closely with the rest of the sector. The noble Earl, Lord Listowel, is absolutely right: at this size, the new body will have a profound effect on those other organisations. The Minister has, all the way through, elegantly batted off any suggestion that this organisation should be required to be accountable and report in any greater detail than that which is set out in the original Bill, but I put it to him that the requirement in my amendment to report on how many young people have gone on to participate in other social action opportunities and the impact that the NCS programmes have had on the wider social action sector should be fundamental parts of the raison d'être of the NCS. If it cannot do that, then we as parliamentarians have to question why so much money is being invested in it.

I think that this is a very modest requirement. If the Minister says that this is too much of an imposition upon the NCS Trust, I am afraid that, yet again, we will be forced to wonder whether the NCS is being overrated and overstated as an organisation and whether it really is safe to invest this much money in it. I hope that the Minister will accept this amendment.

Lord O'Shaughnessy (Con): My Lords, before I address the amendments in this group, I thank the Minister for his comments on the previous group. I did not say anything because I did not think anything more needed to be said, but the amendment is very welcome and a sensible compromise on the part of the noble Lord, Lord Blunkett.

There are two definitions at play in this group of amendments. The first is around the intention of the trust, as it were, in its impact on the wider social action sector, as addressed in Amendments 2 and 4. The other is more about reporting the consequences of those actions, as addressed in Amendment 8. I have a great deal of sympathy with the amendments in the name of the noble Baroness, Lady Royall. I think we all want the NCS to be a spur rather than to crowd out wider social action. Like her, I am extremely committed to promoting the idea of a journey of service.

Whether these amendments are needed is in question. The evidence on the NCS so far is that it is acting as a spur through its commissioning work. It is not a direct delivery agent itself. I forget how many new and established agencies it commissions through its work, but it is clearly already providing income and capacity for the sector and it is difficult to imagine that it will not do more of that as it grows. If my noble friend the Minister were to give a commitment on a review, I hope that would satisfy the intent of Amendment 4.

Amendment 8, in the names of the noble Baroness, Lady Barker, and the noble Lord, Lord Wallace of Saltaire, is a bit more difficult because it is about what happens afterwards as a consequence of the action rather than the intention. It would certainly add to the reporting burden. I am also not sure whether it is the sort of thing on which the NCS Trust would have the capacity to report. It strikes me that the noble Baroness is asking for something that is more properly the work of the sponsoring department, rather than the delivery agent itself. Therefore, although I understand why she has tabled the measure and I understand the concern in all the amendments in this group to make sure that the impact is positive rather than one which crowds out other provision, I am not sure that the suggestion in Amendment 8 is proportionate in terms of the functions and purpose of the NCS Trust, nor would it be productive.

Lord Hodgson of Astley Abbotts (Con): My Lords, I shall detain the House for just one minute to say a few words in support of Amendment 4, to which the noble Baroness, Lady Royall, spoke. Those Members of your Lordships' House who were present in Committee will recall that I was concerned to try to involve international citizen service in the National Citizen Service as part of a seamless whole. My noble friend the Minister was having none of this, and has continued to do so, although he has continued to assure me and others that it is not intended that the two should be anything other than locked closely together, but that it would nevertheless be inappropriate for that to be stated in the Bill. That is partially, I think, for reasons of precedent—always the weakest argument in my view—but, more significantly in my view, because international citizen service has a slightly larger target audience. I have accepted this argument and have therefore not retabled the relevant amendment, but the concept of NCS being part of a journey of involvement in civil society and the voluntary movement is important. If I heard the noble Baroness aright, that is the philosophy behind Amendment 4. Since I think ICS would be part of that further journey, along with participation in a lot of other organisations before and after it, I consider the points she made on Amendment 4 worthy of consideration.

Baroness Scott of Needham Market (LD): My Lords, I had not intended to comment but something the noble Lord, Lord O'Shaughnessy, said prompts me to add that one of the issues that we have struggled with a little throughout our discussions is an assumption

[Baroness Scott of Needham Market]
that because NCS as currently constituted is doing something, it will always continue to do so. I think that assumption lies behind many of the amendments that were moved in Committee and those that will be moved today. The noble Lord was right to distinguish between Amendments 2 and 4, which are about intent, and Amendment 8, which is about consequences. It would be very helpful if the Minister could give an undertaking that his department will continue to take into account impacts on not just young people themselves but on the wider sector as time goes on.

9 pm

Lord Ashton of Hyde: My Lords, I am grateful to all noble Lords for their contributions. I think we can find a way forward on this. The issue here is twofold: what impact does the trust have on the youth sector, and what impact should it have? Amendment 2 would require the trust to have "due concern" for its impact on existing youth provision. Amendment 4 would require it to achieve positive impacts by promoting the youth social action journey. Amendment 8 would require it to report on both topics.

Throughout the passage of the Bill, I have been clear about what the NCS Trust is here to do. Its sole job is to provide NCS in England, so its "due concern" is just that. The primary functions of the trust must relate only to the trust's promotion of NCS, and its job to arrange for the programme's delivery. On that, we have to remain firm. However, this is not to say the trust exists in a vacuum, as I think the noble Baroness, Lady Barker, implied I was implying. A national programme such as NCS will have a significant presence in the youth sector and will work with many youth organisations. I agree that the trust must take this presence and these relationships seriously. It would benefit nobody, not least the NCS, if the trust were not to put these considerations to the fore of its strategic priorities.

That is why I can commit to a change to the draft royal charter for the NCS Trust. The charter will be the trust's constitutional document; the trust must hardwire every element of it into its day-to-day operations. I hope this will enable me to dispel the rumour that the noble Baroness, Lady Barker, gave out, that I want to isolate the NCS. At the moment, as I have said many times, it deals with more than 200 different organisations, and we expect it to do that, continue to do that and expand that relationship.

Baroness Barker: Perhaps I owe the Minister an explanation. I do not ascribe that view to him. However, I have to refer to the speech made by the noble Lord, Lord Maude, at Second Reading, when he talked about the design of this programme and the deliberate intention from the beginning to make it a body separate from the rest of the sector. The fact that that is a founding part of its design, which is perpetuated in the Bill, is the source of wide concern in the voluntary sector.

Lord Ashton of Hyde: I am grateful for that explanation and I accept what the noble Baroness says. It is absolutely true that the trust is set up as a separate organisation for the reasons we mentioned. But let me come to what I was about to say and we will see whether that will satisfy her.

We propose to add to the preamble of the charter a formal recital that outlines our belief that, "it is desirable that other organisations supporting young people should benefit from the actions of the National Citizen Service Trust". This answers both issues. The trust's royal charter now makes explicit that the trust should always be mindful of how it is impacting on the youth sector and should look at the benefits for that sector of any activity or decision it undertakes. As I have said, the trust will have to report on how it arranged for the delivery of NCS. It will report naturally on its relationships with the youth sector by outlining how it has worked with NCS providers and other partners. With this addition to the charter, Parliament can now even more readily expect the trust to consider how it has sought to benefit the youth sector when self-reporting each year.

The NCS Trust acknowledges its role in developing a coherent youth social action journey for young people. It is a founding member of Step Up To Serve's #iwill campaign, and its chief executive sits on the board of Generation Change. Government has a role to play in ensuring that those overseeing the trust share a passion for improving the opportunities available to young people before, during and after NCS. This change to the charter sends a clear signal that, through the governance arrangements in the charter, the Government will do just that, now and into the future. This should provide noble Lords with the reassurance that we agree with their core argument—that the trust must be aware of its presence in the youth sector—and that we have moved in an appropriate way to accommodate this.

My noble friend Lord Hodgson and the noble Baroness, Lady Royall, talked about the social action journey and volunteering and so on. The noble Baroness specifically asked me about the government review of volunteering and social action, and I acknowledge that she has been very patient. During the course of the Bill I said that we will be able to talk about that "in due course". I think we then moved to "soon" and perhaps even "imminent". I can now say that it is very imminent. I hope—although it is not in my power to guarantee it—that we will be able to see something before Third Reading.

On the basis of that and my commitment to amend the royal charter, I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Royall of Blaisdon: My Lords, I am grateful to the Minister both for the imminence of an announcement—that sounds absolutely terrific—and for his proposed amendment to the royal charter, which I think should, as he put it, hardwire into the trust's day-to-day deliberations and actions both the journey, as it were, and the relationship between the NCS Trust and the other organisations. I hope it will be a very firm signal to the NCS Trust that it must respect and empower other organisations that are part of that journey and that nothing it does should endanger the viability of those organisations. Indeed, it should be a catalyst for ensuring that those other organisations have vitality and life. I am very grateful for that.

There is one thing that I would ask. Can the words that the Minister quoted be put in the body of the charter rather than in the preamble to it? It is great to have them in the preamble but, as I understand it, if something is in the body of the charter, it is given more substance than if it is in the preamble.

Lord Ashton of Hyde: I am grateful for the noble Baroness's earlier remarks. We are putting this in the preamble because it is trying to create a mindset in the NCS's board that it should be considerate of the wider sector. We are not talking about a specific function to carry out impact assessments or anything like that; we are putting it in the preamble to make sure that the board is aware of it and that it takes account of some of the things that the noble Baroness, Lady Barker, spoke about. We are not doing this lightly. We do not ask the Queen to put these benefits into her words. There is a technical difference between the body of the charter and the preamble but it is more appropriate to put it in the preamble to get the mindset right. We think that the NCS Trust board members will be fully aware of that and it will be a signal to the wider world about their duty.

Baroness Royall of Blaisdon: I thank the noble Lord for that explanation, which satisfies me. I hope it will satisfy my colleagues at the other end but we shall have to wait and see.

The other thing I would say to all noble Lords—for whose support I am very grateful—is that we should be very mindful of this issue when we have the first report from the NCS Trust next year. We should make sure that it is acting in accordance with the words of the charter—its preamble and its substance—but also of course with the words of the Bill.

Lord Ashton of Hyde: On that subject, I remind the House of what I said on the previous occasion. We will write to the NCS Trust with the suggestions that noble Lords have made—for example, in relation to reporting—so that it is fully aware of the issues that have exercised your Lordships.

Lord Stevenson of Balmacara: I appreciate that this is not Committee and that we should not engage in over-extensive dialogue but the exchange on the question of the Royal Charter raises a substantial issue and I wish to intervene briefly on that. There was an engagement in Committee on the question of whether the Royal Charter should have a clause inserted into it to prevent changes being made to it which were not in accordance with the statute, so as to mirror the Bill's provisions on the charter arrangements. The Minister is talking about adding to and changing the draft charter, which we have had an opportunity to look at—we are grateful for that—and it would be helpful if we could track it a little more closely so that, as well as receiving reports as and when and knowing that a letter will be sent to the NCS trust invoking the spirit of the charter, we can see what the wording is before we get to Third Reading. Can the Minister arrange for a further draft to be made available to us, so we are fully informed at that point?

Lord Ashton of Hyde: It is reasonable that when I say we are going to make changes to the charter, we should tell the House what they are, rather than just reading them out. I am certainly happy to do that.

Baroness Royall of Blaisdon: With that, I am happy to withdraw my amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Lord Cormack***

3: Clause 1, page 1, line 13, at end insert—

"( ) to provide for a pilot programme for a national citizenship scheme open to all young people between the ages of 15 and 18 and leading to a graduation ceremony on completion,"

Lord Cormack (Con): My Lords, I am grateful to the noble Baroness, Lady Royall, who was willing to move this amendment on my behalf at a time when it appeared that the Bill would be taken when I could not be here. I am grateful, too, to all those who spoke in support of a similar, slightly more ambitious amendment that I moved in Committee. I would like to put on record my thanks to the noble Lords, Lord Wallace of Saltaire and Lord Bird, and the noble Baronesses, Lady Royall and Lady Byford, who is not able to be here tonight.

I have felt for a long time—I raised this on Second Reading and again in Committee—that we are in danger of missing a great opportunity here. There is enormous value in having a national citizenship scheme open to all 15 to 18 year-olds, under which they would have a proper programme of community service and a more far-reaching citizenship education than, sadly, is often received in our schools, at the end of which they would be able to go through a kind of graduation ceremony as a recognition of not only their rights but their responsibilities.

I detected a fair amount of support for this in Committee and when I have raised it on numerous other occasions in the House, I have always had support. Indeed, at one stage I took a group of colleagues from all parts of the House to see the noble Lord, Lord Nash, to discuss this in his department. Now that we have this Bill, I would like to see some acknowledgement of the worth of such a scheme.

However, because I detected in my noble friend's reply and in the comments of others that I was being too ambitious and placing too much upon this new scheme, I have worded this amendment to propose that we have a pilot programme. This could be carried out in one or more areas of the country and need not involve a large number of schools initially. My native county of Lincolnshire or the county I had the honour to represent for 40 years in another place, Staffordshire, would, I know from conversations, both be willing participants. I commend it to your Lordships. It could bring great benefit and profit.

I have before said that such a scheme could be administered at little cost, with no party-political tarnishing, if it went through the lieutenancy. We all

[Lord Cormack]
have in our counties a lord-lieutenant and a considerable number of deputies—I have the honour to be one myself. It could be done as the ceremony is done for those who take British nationality.

This is a much more modest amendment than I moved in Committee, but I hope that my noble friend, who has given great encouragement to colleagues up to now, can give me a crumb of comfort as well. I beg to move.

9.15 pm

Baroness Scott of Needham Market: My Lords, I want to put on the record my thanks to the Minister for picking up the point I made at Second Reading and then again in Committee about the database held by HMRC being the most complete for this age group. I asked him at that point whether he would consider how we might use that to encourage electoral registration. I was very pleased to hear that something called the democratic engagement team in the Cabinet Office has taken up the idea and is looking at it. The Minister also said in his letter to me, rather cryptically, that,

"I am not in a position to announce anything at this stage".

I look forward to hearing if not from this Minister then from another how that is going.

I was also pleased to read in the letter that the royal charter will address the question of encouraging participants to take an interest in local and national politics. That is very important, because otherwise this would be just a volunteering Bill. The Bill uses the word "citizen" and is therefore relevant to matters such as registering to vote or participating in local and national politics. I suggest to the Minister that it is worth the democratic engagement team having a conversation with the Local Government Association—I declare an interest as a vice-president—about the work it does in recruiting people who may be interested in becoming councillors, as well as with the local and parish council tier, because young people become parish councillors and make a really good contribution to their local community.

Finally, your Lordships' Select Committee on Charities, of which I am a member, has heard that there are very few young trustees of charities. This is another area where it would be worth the team looking at whether civic engagement could be extended to becoming trustees.

Lord Bird (CB): My Lords, I shall speak to the amendment on citizenship. I am interested in the difference of opinion that seems to be developing on whether the NCS is a means of building character or a means of building democracy. I am interested in the idea that we have to build democracy within our young people. The ideal of building character is all well and good—the boot camp-type argument: "Go out there and have a wonderful time and get very wet and cold, and work with your comrades and come back and enjoy the experience and join with other people". That is really interesting, but it lacks an understanding of what democracy is. Democracy extends only to a very small part of our nation, because if you live in poverty you do not live in democracy. Democracy and poverty do not go together.

If we are trying to reach down into the innards of society to help people build a basis in their early years so that they can develop not just literacy but social, political, cultural and democratic literacy, we need to look at opportunities of talking about citizenship whenever they present themselves.

Citizenship is one of the most profound ways we have of bringing many things together. I backed the amendment of the noble Lord, Lord Blunkett, because I believe strongly that we need to unite character building—I am grateful for that and I have done it all; I am the result of a lot of character building—with citizenship, in which we really need our children to participate. Schools are failing in the arguments around citizenship. Many schools do not teach it. If we can, we must build a basis on which our young people get the opportunity to come together and break down class differences, which is of vital importance in building a different world from the one we live in at the moment.

I suggest that the Government need to get behind citizenship and the very idea of why we started the NCS in the first instance. We were worried by the fact that children were not participating in democracy and that between the last election and the previous election, the number of young people voting fell from 60% to 40%. All these things are very much related to the arguments around citizenship.

Baroness Royall of Blaisdon: My Lords, I support the spirit of both these amendments. Like the noble Lord, Lord Bird, I think that character building and civic responsibility go together and that both are essential for democracy. I deeply regret that the teaching of citizenship, which was introduced by my noble friend Lord Blunkett in the early 2000s, is not taken as seriously as it might be. A lot of schools fail their pupils because it is not taken seriously, but I well understand that this is the responsibility of the Department for Education and it might not want the DCMS to try to push this through the back door. Yet it is a hugely important issue that we should progress.

I am very pleased that the charter says that the NCS should be,

"encouraging participants to take an interest in debate on matters of local or national political interest, and promoting their understanding of how to participate in national and local elections".

When the noble Lord writes to the NCS, he might suggest that when participants do this specific part of their learning, not only are they encouraged to register to vote but forms for them to register—they can register well before they are 17—are made available by the NCS. This is not political in any way. This is empowering young people to ensure that they are able to use their vote because they registered.

I rather like a lot of things said by the noble Baroness, Lady Scott, about civic engagement. The department she referred to could do a lot more on that. I found the proposal from the noble Lord, Lord Cormack, about the pilot programme quite attractive. It is certainly a lot less than he asked for last time. I do not know what the Minister's views are but if it is not accepted in this Bill, we should continue to discuss it. The NCS will be a national scheme but it would be excellent if all young people had to do something.

I support the spirit of Amendment 3 and the amendment of my noble friend Lord Blunkett and the noble Lord, Lord Bird, although I can see that they perhaps do not quite fit into the Bill.

Lord Stevenson of Balmacara: My Lords, I confess that I have not been very good at getting to grips with the NCS as an activity until recently. We in the rather sheltered DCMS team did not have much responsibility for civic affairs until quite recently, when it was suddenly, and very welcomely, transferred into our brief. Like the noble Lord opposite, we had a bit of a learning curve to understand where this all came from and where it might end up, but we are there, I think.

To cut a very long story short, I invited myself to the autumn programme, which is a shortened version of the summer programme, as it was operating in Croydon College. I discovered I was there not just to observe but to participate. I was a "dragon"—well, I am a dragon, really, in private life, so it was quite appropriate—in a test for six groups of young people; it was originally three but by the time we got there it had got to six. They had to appear in front of three dragons who had to investigate their work on preparing themselves to go out and do social action—this week, I think. They had been brought together as a result of the NCS. They were working together for the first time. They were drawn from very wide groups, although admittedly they were all from the Croydon area. They had to pitch to us a proposal for how they might spend the princely sum of £50 should we dragons be prepared to award it to them. It was great fun, particularly when they got the chair of the NCS up and blindfolded him and made him throw tennis balls into a bucket, advised by another dragon, which he was particularly bad at but blamed everybody else except himself for his inability to make it work. But it showed that the adults were just as bad as the children we were trying to impress with our various processes. Sorry, I ramble on.

My point is that I used the opportunity to find out a bit more about the scheme. One thing I asked, which bears on these amendments, was whether Croydon College had within its academic courses any engagement with the citizenship programme mentioned by my noble friend Lady Royall and whether or not it had any play-across. I was pleasantly surprised by the fact that everyone I spoke to—I spoke to about half a dozen individuals involved in the trust—said yes, they had been taught this; it was part of what they were doing. The teachers said that they had had some difficulty programming it in but they wanted to do so. Therefore, as well as the practical aspects of the social action programme that they were doing, there was an understanding of the theoretical basis. This was actually an NCS programme delivered by The Challenge and therefore it was an example of co-operative working across different organisations. Everybody involved was enthusiastic and committed, the kids were wonderful, and it was a really effective and most interesting day.

That is a long way in to saying that I support the amendments in this group. I feel sad that the noble Lord, Lord Cormack, has had to move away from his original ambition, which was to tie this more securely to the existing programmes, but I can understand why he feels that a little progress might be better than none at all. Of course, we are all impressed by the way in which the noble Lord, Lord Bird, has embraced this issue and is passionate and committed to how it could help in a wider sense than just the NCS; it would also have a place within the NCS. I am sorry that my noble friend Lord Blunkett has had to leave before contributing because he is the granddaddy of this whole area.

We have been throwing the royal charter around again. My noble friend Lady Royall arrived at the same point I do: there is an opportunity in the charter to take this a bit further. If it is not possible to amend the Bill—and these are probably not the right words to go into the Bill at this stage—surely it is possible to think about expanding paragraph 5.b.iv on page 8 of the charter, quoted by my noble friend Lady Royall, which could bear a bit more of the direct wording from some of the amendments we have here. If that were the case, it would have a bit of a bite on the NCS. I recommend that to the Minister, if that is possible.

Lord Ashton of Hyde: I am grateful to my noble friend Lord Cormack and I acknowledge that this amendment is less far-reaching that the one in Committee. I fear, though, that I will be able to offer him only a small crumb of comfort, if at all, but I will try. I thank the noble Lord, Lord Bird, for his amendment on citizenship.

The arguments today follow on from the lengthy debate about citizenship in Committee. I take on board the views on this topic but I am afraid I am unable to change my basic response. I mentioned previously the role of volunteering in promoting citizenship and the role of NCS in promoting a sense of it among participants, as outlined in Article 3 of the charter, so I will not rehearse those points again today. However, I have to come back to the central point that the NCS Trust is here to deliver NCS. Though it can achieve some of the same outcomes as citizenship education—a sense of community and a desire to serve—it is not a citizenship scheme. NCS primarily exists to help improve social mobility and promote personal development. NCS and citizenship overlap but are not the same thing. The NCS Trust is not therefore funded, resourced or equipped with the specific expertise to provide a pilot national citizenship scheme.

9.30 pm

My noble friend Lord Cormack said previously that the Bill lacks ambition but the aspiration to expand NCS to all 16 and 17 year-olds who want a place is ambitious enough, if it is to ensure quality and value for money. We cannot afford to divert the NCS Trust from its primary task.

As for Amendment 4 from the noble Lord, Lord Bird, on supporting schools, I was going to mention the clear words mentioned by the noble Baroness, Lady Royall, and the noble Lord, Lord Stevenson, which answer many of the points that the noble Lord, Lord Bird, raised. I will not repeat them now. Nevertheless, while the Government are committed to citizenship being part of the national curriculum, this is an NCS Bill concerned with the activities of the NCS Trust, which cannot reasonably be expected to carry out this function. The trust cannot impose its support on a

[Lord Ashton of Hyde]
school where the school does not want citizenship education to be the mechanism by which it develops a relationship with the trust.

Of course we agree that citizenship education is an excellent way to promote NCS. I commend once again the work of the Association for Citizenship Teaching in producing guidance for schools on how they can link the citizenship syllabus with NCS. The Government are producing guidance for schools on how they can work with NCS. I can make a commitment to the noble Lord, Lord Bird, that we will include the link to citizenship education in that guidance. I hope he will accept that commitment and feel able not to move his amendment, and that my noble friend Lord Cormack will feel able to withdraw his amendment in light of my earlier remarks.

I have taken on board the detailed suggestions of the noble Baroness, Lady Royall, about voter registration. I will take that back, although I have no guarantees on it. I also listened carefully to the noble Lord, Lord Stevenson. While we have made some pretty specific requirements of the NCS Trust to get itself involved in citizenship education, we want to be careful not to get too deeply into details of how it should do these things, so I cannot guarantee that we will be able to develop that later. With that, while I am sorry that I cannot continue my record of helping on every group of amendments, I ask my noble friend Lord Cormack to withdraw his amendment.

Lord Cormack: My Lords, my noble friend indicated that he would promise a crumb of comfort and I have not had even a grain of sand. But it is late and to call a Division on this amendment with such a thin House would be folly indeed. All I can do is express the hope that when the Bill is on the statute book, as it undoubtedly will be before too long—and of course I wish it success—I may be able to sit down with my noble friend and other colleagues in government to discuss what we can do about a citizenship scheme. If it is not something that fits into this Bill, it is something that should fit into this country. I feel passionately about that. I am delighted that the noble Baroness, Lady Royall, is nodding so vigorously—it is good to have her support as well as that of others, for which I am most grateful. This is an idea whose time really has come and we have to bring it to pass.

With that expression of disappointment but hope that my noble friend—who is a thoroughly good egg—will try to help me to bring this to fruition, I beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 and 5 not moved.

Clause 3: Finance

Amendment 6

Moved by ***Lord Shipley***

6: Clause 3, page 2, line 11, at end insert—

"( ) The NCS Trust must ensure sufficient funds are available to enable young people with disabilities to participate in its programmes."

Lord Shipley (LD): My Lords, in moving Amendment 6 I shall speak also to Amendment 7. We discussed both these amendments in Committee. At that time I was a little disappointed with the Minister's response for two reasons: first, it implied that support for young people with special needs is more widespread than it actually is in the form of personal coaches and one-to-one support workers; and secondly, reporting on the numbers of disabled young people who have participated really is not an unreasonable burden for providers and the NCS Trust to undertake.

I am grateful to the Minister for our meeting last week at which we went through what might be done to meet those concerns. Subsequently, he has written and confirmed that the NCS Trust will be subject to Section 149 of the Equality Act 2010, meaning that the trust, in discharging its duties must,

"have due regard to the need to … advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it",

and,

"foster good relations between persons who share a relevant protected characteristic and persons who do not share it".

I am also grateful to the Minister for confirming that that means that there will be a need to remove or minimise disadvantages suffered by disabled people and that this requires steps being taken by a provider to meet an individual's particular needs. However, there are still two concerns: first, the cost of providing the extra support required; and secondly, a need for there to be a report on outcomes and for there to be a clear requirement on the NCS Trust to be proactive in fulfilling the requirements of the Equality Act.

Amendment 6 would ensure that funds which are ring-fenced are made available to NCS providers to apply for in order to meet the cost of providing the specific support that disabled young people may require to access an NCS project. In Committee the Minister stated that the NCS Trust will continue to,

"work flexibly to provide any reasonable additional resource or support that a provider may require to deliver the programme".—[*Official Report*, 16/11/16; col. GC 147.]

That is laudable, but there are nevertheless examples of disabled young people who have not been able to access the scheme due to the limited funding available to meet their needs. Will the Minister—or, indeed, the NCS Trust—say more about the funding that is available so that it can be assessed whether it is sufficient to ensure the inclusion, for example, of a deaf British Sign Language user?

Perhaps I may give the Minister two examples of the problem. First, Ambition UK recently encountered a young person who had additional needs and went back to the NCS Trust to request support for its subcontractor so that it could put the support in place for the young person. However, it is reported that none was forthcoming. Secondly, two years ago, three deaf young people in the north-west started the NCS programme. Two who were more reliant on British Sign Language disengaged from the programme fairly quickly. They said the venue was too noisy and was not inclusive. The third one completed two stages of the programme but not the third stage. The National Deaf Children's Society offered deaf awareness training

with the deliverers on numerous occasions but it was not taken up. It is obvious that it is one thing to have a statutory policy at a national level, but it is another for it to be fulfilled at the level of a specific project or programme.

The draft royal charter accompanying the Bill does not make any specific reference to young people with disabilities. Article 3.4.a refers to the objective of the trust being,

"ensuring equality of access … regardless of … background or circumstances".

This can be interpreted as including young people with disabilities. However, Amendments 6 and 7 would help to strengthen accountability and provide a more specific focus on disability. Amendment 7 would put in place regular reporting about the participation of disabled young people. This will enable others to make assessments of the accessibility of the service.

In Committee the Minister referred to Clause 6, which requires the NCS Trust to report on the extent to which people from "different backgrounds" have worked together in programmes. I hope the Minister will agree that a more specific focus is needed on disabled young people, who are particularly vulnerable to exclusion. I do not feel that reporting on the numbers of disabled participants would be an unreasonable burden for NCS providers.

I make one further point on marketing. The NCS website has few details about the support available for disabled participants. Subtitles have not been created for many of its promotional videos and there are no videos in alternative accessible formats such as British Sign Language. I hope the Minister will confirm that there will be plans in place to publish those details. I beg to move.

Baroness Royall of Blaisdon: My Lords, I support the noble Lord, Lord Shipley, and the amendments, to which I have added my name. Funding is an issue for people with disabilities. I will read out one brief case study to illustrate that fact. It comes from the south-west, where I am from, and came to me via the Communication Trust. It states:

"A boy with complex physical difficulties (uses a wheelchair and an augmentative and alternative communication device) who attends a mainstream secondary school in the South-west was interested in joining the NCS scheme last year".

That is great news. It continues:

"His mother completed the initial application and was put in touch with the local provider and held a conversation with them about her son's needs. The mother explained that she could fund a support worker for the required time and that her son had successfully accessed many outdoor type activities with other non-specialist providers. The provider came back to the mother to tell her that they could not include her son in the NCS scheme—they would require additional funding and would not be able to meet the whole group's needs. No alternative options were provided".

This demonstrates why Amendment 6 is necessary, but I also support the reporting mechanism.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord, Lord Shipley, for the amendment. It comes to a matter that sits at the heart of the NCS: it must be accessible to all. It is the Government's manifesto commitment to ensure that any young person who wants a place on the NCS can have one. Article 3.4 of the royal charter states clearly that the trust must ensure,

"equality of access to the programmes by participants regardless of their background or circumstances".

The trust simply will not be fulfilling its duties under the Bill and royal charter if it does not take steps to make the NCS accessible to people with disabilities.

The Bill and royal charter ensure, resolutely, that the trust will have to provide places on the NCS to young people regardless of their background or circumstances. If this requires a provider to secure reasonable extra resource, the trust will be expected to supply it. I cannot be more unequivocal. I obviously do not know the details of the examples the noble Lord mentioned, but I am certainly happy to take those back to the NCS Trust.

I accept, however, that Parliament and the public have a right to be reassured. NCS providers may have to make physical changes to the programme in order to accommodate somebody with a disability, and the trust has a responsibility to ensure that its providers can do so. I can therefore confirm that the Government intend to table an amendment for Third Reading which will add to Clause 6. Where the current drafting mandates the trust to report on the number of participants, we will be adding a line to specify that this must include the number of participants with a disability. Each year, we will be able to see how the trust is performing in this area. The only way for the trust to report progress on this measure will be by ensuring that the programme is truly accessible to all across the country. Further, the Government will amend the royal charter to add a further recital to the preamble, stating that it is desirable to take steps to overcome any barriers to participating in volunteering opportunities which young people may face as a result of their background or circumstances. This is in addition to article 3.4, which I have mentioned, and to the trust's primary function to enable participants from different backgrounds to work together in local communities.

Explicit throughout the Bill and the royal charter will be the core expectation that any young person who wants a place on NCS can have one and that the trust must deliver. In the light of that commitment, I hope that the noble Lord will feel able to withdraw the amendment.

9.45 pm

Baroness Scott of Needham Market: Before the Minister sits down, I say that I cannot recall whether during our various discussions we have ever discussed redress. The commitments the Minister has made tonight are very welcome, but I wonder what the redress of an individual or the parents of an individual is and to whom they complain if they think that these things are not being dealt with. We need to approach this from two angles. One is strategic—as Parliament we want to see these figures—but the other is at an individual level, and I am not sure that we have ever discussed that. If the Minister cannot reply this evening, it might be helpful if he could write to us before next week.

Lord Ashton of Hyde: I do not think it is appropriate to do that on Report. The purpose of the amendments and of putting these things in the royal charter is so that it is absolutely clear what the duty is, so that the members of board of the NCS Trust are very clear about what their duty is. They have to have policies and procedures to make sure. I cannot guarantee it, but I imagine there will be a complaints procedure as well, but I will have to confirm that, so I will write to the noble Baroness and circulate the letter.

Lord Shipley: I thank the Minister for his assurances about reporting and look forward to discussing it further and seeing the amendment when we reach Third Reading. I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Clause 6: Annual report etc

Amendments 7 and 8 not moved.

Clause 7: Notification of financial difficulties

Amendment 9

Moved by ***Lord Cromwell***

9: Clause 7, page 3, line 34, at end insert—

"( ) a member of staff or a volunteer of the NCS Trust or of an NCS Trust provider is the subject of allegations to the NCS Trust, NCS Trust provider or the police, of criminal mistreatment or abuse relating to their activities with young people."

Lord Cromwell (CB): My Lords, I thank the Minister for discussing this amendment with me since our last debate on the subject. We are very positive about the Bill but we also have to look on the dark side, and that is what my amendment does. Noble Lords will know that the Bill includes a requirement for the NCS to report immediately to the Secretary of State if it has financial difficulties. We might call it the "Kids Company" clause. The purpose of the amendment is to ensure that any allegations of child abuse are treated with at least equal seriousness and reported upwards in the same way. Anyone who has been in contact with the news in the past few days will be aware of the unfolding stories of child abuse and the failure to report it within the football world, where it appears to have been dealt with by a combination of not looking, not listening, not reporting and offering payouts.

We should not allow this huge amount of money to be injected into the NCS, a network of organisations dealing with vulnerable children. We must not allow it to create another opportunity for such behaviour or for such reactions to it. My acid test, mentioned at Second Reading, still holds true. If the Secretary of State wants to know at once if there are money difficulties, and includes this specifically in the Bill, I am sure they would equally want to know at once if there are allegations of child abuse, particularly if a pattern of repeated allegations was to occur.

It was suggested to me that the trigger for reporting to the Secretary of State should be a police investigation. I hope that the current situation in the FA and elsewhere, where police investigations are only now mushrooming, decades after the original alleged offences, shows that this is not the right approach. I have therefore not locked down the amendment to that criterion alone. I ask the Minister to consider supporting this amendment tonight and beg to move.

Baroness Royall of Blaisdon: My Lords, I will merely say that this seems to me to be an eminently sensible amendment, and if I were the Secretary of State, I would certainly wish to have this information available to me.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord for raising this important topic again. I also echo his thanks for our being able to discuss this in a very constructive way.

As I have said before, the royal charter states that the NCS Trust's paramount concern is the well-being of its participants. We could not have been more categorical about that. The trust will need to have robust and effective safeguarding policies and processes in place. We see value in the Secretary of State being informed, at a point where it provides obvious benefit, of allegations of criminal behaviour that might have an impact on the NCS Trust's ability to operate. I have committed to looking at this.

However, as far as safeguarding is concerned, the primary responsibility of the trust must be to inform the police or local authority where there is a suspicion or allegation of abuse, so that action can be taken to safeguard children and any crime can be properly investigated. Informing the Secretary of State is not an appropriate alternative escalation route as they are not able to take action in the same way as the police or local authority.

In this sense, informing the Secretary of State of criminal allegations is different to informing them of serious financial issues, which is already required in the Bill, as the noble Lord said. In the case of financial issues, the Government, as the funder, will often be the appropriate authority to take action. This is not the case for abuse allegations. It may be appropriate for the Secretary of State to be informed where there are systemic failings in the safeguarding practices of NCS organisations, and we have considered how we might specify that.

The Home Office and Department for Education jointly conducted a public consultation earlier this year on possible new measures relating to reporting and acting on child abuse and neglect, including the possible introduction of a new mandatory reporting duty or a new duty to act. The consultation closed on 13 October, and the Home Office is now carefully considering the wide range of responses from practitioners, professionals and the wider public. It will update Parliament on the Government's conclusions in due course.

We will not attempt in this Bill to pre-empt or replace general law in this area. We have had a number of discussions and I am happy to give the noble Lord,

Lord Cromwell, the commitment that Her Majesty's Government will make good on those discussions and bring back a government amendment at Third Reading. However, as he knows, we cannot agree all of what he wants. If the noble Lord wants to insert this amendment into the Bill, he will need to test the opinion of the House today, as I cannot give him the further assurances he is seeking. In summary, I regret that I have to inform the noble Lord that further discussions will not result in any further concessions. I thank the noble Lord again for his patience and good humour during our exchanges, which I know will leave him disappointed.

Lord Cromwell: I thank the Minister for his reply. I was so looking forward to calling him a good egg, like the noble Lord, Lord Cormack, but I am afraid I am going to have to disappoint him. I am indeed disappointed. I understand that the Minister will be coming back at Third Reading with a version of this amendment—he is nodding, so I trust that is correct—and I hope I might be more encouraged when I see it; but clearly, seeing will be believing. In the meantime, he is correct that I am disappointed. With reluctance, I do not think it is practical to call a Division at this time of day or with this number of noble Lords, so sadly and with a heavy heart, I beg leave to withdraw my amendment.

Amendment 9 withdrawn.

Clause 9: HMRC functions

Amendment 10

Moved by ***Lord Stevenson of Balmacara***

10: Clause 9, page 4, line 12, leave out "may" and insert "must"

Lord Stevenson of Balmacara: My Lords, this is an amendment I tabled in Committee and which received a very positive response. I am hoping to cap the "egg" with perhaps a "double egg" after the Minister's response.

Lord Ashton of Hyde: I think I am a curate's egg, good in parts, and I hope this will be a good part. I am grateful to the noble Lord for his amendment. It asks the key question, "Who will be the author of the information that HMRC sends out to young people, parents and carers?". I have made the point a few times about how HMRC will act as a delivery service for the NCS Trust, and this amendment is in keeping with that. As drafted, the Bill provides that the trust may determine the contents of the communication being sent out. The Government intend that this always be the case. HMRC's power should be only to deliver the communication using its contact data. The amendment from the noble Lord, Lord Stevenson, would oblige the trust always to determine the content of the communication, clarifying beyond doubt that it must be authored by the trust. I am therefore pleased to say that the Government accept the amendment, and I am grateful to the noble Lord for highlighting this issue.

Amendment 10 agreed.

Amendment 11

Moved by ***Baroness Barker***

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

"Independent review of NCS Trust commissioning

Within five years of the coming into force of this Act, the Secretary of State must commission an independent review of commissioning by the NCS Trust, which shall include, but need not be limited to—

(a) the extent to which small, local providers are able to access contracts,

(b) the barriers which may prevent small, local providers from being able to access contracts, and

(c) the extent to which the NCS Trust has diversified the providers which deliver its programmes."

Baroness Barker: My Lords, I hope that is the beginning of a trend. We return to an issue that was raised by the noble Lord, Lord Hodgson, in his amendment in Committee. I have submitted a revised version of that, partly because I did not know whether he was going to do so. This deals with an extremely important issue: the effect of the NCS Trust as a commissioner of services from the rest of the voluntary sector.

It might help noble Lords if I explain why some of us see this as being as important as we do. I commend to noble Lords, particularly the Minister, the transcripts or the recordings of the Select Committee on Charities, particularly its session on Monday, when we invited a number of big charities to talk about commissioning. We discussed at considerable length the somewhat damaging experience of using prime contractors and subcontractors, particularly in social care but also in the criminal justice system. I also commend the transcript of yesterday's session of the committee, when we discussed exactly the same issue with the Minister with responsibility for the OCS.

It is fair to say that over the past five years or so the growth of this model of commissioning of services has had a profound impact, not all of it good. The work programme is the one that we keep coming back to: in effect, the way in which services were commissioned ruled out small providers and set up unhealthy relationships between big commercial providers that were able to deliver at scale and very cheaply at the expense of small organisations. The whole issue of commissioning is deeply problematic but it is the model by which the Government have chosen to deliver the NCS. I think the noble Lord, Lord Hodgson, understands how that experience has coloured the perceptions of the rest of the voluntary sector. We know what the Government are trying to do, but there is concern that such a big programme will have a disproportionate effect. The key thing that Parliament needs to look at is whether the process by which the NCS Trust goes about its commissioning work with small providers is harmful to the overall youth social action sector. This very much mirrors some of the points made by the noble Baroness, Lady Royall. The noble Lord, Lord Hodgson, is wandering round a similar part of the discussion but in a slightly different way.

[Baroness Barker]

With that, I ask the Minister to understand that this amendment is not in any way anti-NCS. It is about raising some real and grave reservations about the sub and prime commissioning model. I beg to move.

10 pm

Lord Hodgson of Astley Abbotts: I shall speak to Amendment 12 in this group. As the noble Baroness said, I raised the issue in Committee, although I was looking for a review after one year and she is looking for it after five. I am now thinking about three years. It is like Goldilocks's porridge—a bit too cold and a bit too hot. Three years might be just about right.

It is a few minutes past 10 so I shall not weary the House with a long diatribe about issues that we have already covered. It is really about how we will protect the position of small providers—the ones who are rarely able to get to the hard-to-reach groups—and avoid their getting squeezed out. The noble Baroness has touched on some of the issues that I am sure the committee of the noble Baroness, Lady Pitkeathley, has been looking into. As I have said, it is a combination of risk-aversion on the part of commissioners and the ease they have in dealing with a single supplier. That can result in a small supplier becoming what is known in the trade as bid candy. That is to say, an attractive, small organisation is put up as the front of a major contractor's proposal. Not only is the bid candy an unattractive aspect of the situation, the bid candy often finds itself squeezed into the most unattractive part of the contract. The bid contractor takes the vanilla stuff and the small supplier is left with the most difficult aspects of the contract to fulfil.

My noble friend has heard me on this again and again. He will be weary of my saying that I still remain keen to believe that there is a real case for an independent review of the commissioning process after it has begun to settle down and we can see how things are starting to work.

My noble friend said in Committee:

"The Government will be working with the trust during this period to ensure that it abides by the latest best practice for commissioning and procurement. There is a dedicated team in the Department for Culture, Media and Sport which works with the trust to oversee and support its contracting rounds and I assure my noble friend that we will continue to review the trust's commissioning behaviours as a matter of course".—[*Official Report,* 22/11/16; col. GC 183.]

I shall not say a word against the good men and women of the DCMS. I am sure they are doing a splendid job but they are not reviewers or commissioners. They have a day job to do; they work in the DCMS. I just do not think they will be able to get into the detail required to make sure that the squeezing out that the noble Baroness and I fear is not taking place. It is too likely to happen.

My noble friend went on to say that as a backstop there is the National Audit Office. Again it is a terrific organisation and does tremendous forensic investigations, but it does so at a very high level. We are talking about being right down in the muck and bullets in how these things work. The NAO is not, therefore, equipped properly to do the sort of thing that my amendment and that of the noble Baroness have in mind.

I hope my noble friend will give this some further thought. It is a small thing to do but an important way of showing the voluntary sector as a whole that the Government, the NCS Trust and this House have the interests of the small provider and the small battalion at heart, and that we will put a provision in place to ensure that—once we test how the commissioning is going and see that it has set itself out in the way that I am sure everybody in the House believes is appropriate—local providers have a real role to play in establishing and building the National Citizen Service.

Baroness Royall of Blaisdon: My Lords, can I make a suggestion? If the Minister is not minded to accept either of these amendments this evening, perhaps he might wish to look at the evidence sessions to which the noble Baroness referred, because these things are happening in parallel, and come back to this at Third Reading.

Lord Ashton of Hyde: My Lords, these amendments have a common purpose: to put it in statute that a one-off independent review of the NCS Trust's commissioning takes place after this Bill is passed. Amendment 11 would have it within five years, and Amendment 12 within three; the latter includes a requirement to review benefits to economic, social and environmental well-being. This reflects the discussion we had in Committee about the social value Act.

I cannot disagree with the intention of the amendments or the sincerity with which they have been presented. They mirror the ambition of the Bill: to make the NCS Trust accountable for its performance. But my noble friend and the noble Baroness would go further than what is currently drafted—too far, I would argue, for a piece of legislation. The Government want the trust to be accountable for its outcomes. It must demonstrate and report on how it is providing a quality programme for young people. We discussed these reporting requirements in Committee. The Government are concerned with what the NCS delivers more than the details of its methods. We believe that it is vital to trust in its own expertise to deliver a vibrant, innovative programme. The NCS Trust works with over 200 providers. The programme has grown dramatically since 2013, but the diversity of providers has not reduced. We should have confidence in the trust's expertise. That is why it has been set up to deliver NCS—it must have the freedom to evolve. I would be worried about the message sent by these amendments: that we are setting up a body we do not trust. To put it in statute that an independent review will be needed would send a negative signal, given that the trust will have to submit reports and accounts each year documenting its activity, be subject to the NAO and Public Accounts Committee and have independent evaluation. There is a limit to the reporting burdens that we can impose on the trust.

Having said that, I understand the concerns. The trust is overseeing the growth of the NCS programme, and it is right to be interested in how it copes with this continuing expansion. Of course if, in future, Parliament were to have legitimate concerns about the trust's practices, based on the evidence of its reporting, NAO studies, and the independent evaluations of NCS

outcomes, there would be every reason for government to establish an independent review. It would do so because there would be reasonable doubt in the organisation's operations. Nothing in the current Bill and charter precludes this. The NCS Trust must be accountable, but it must be trusted also. The Government are clear on this, and I hope that my noble friend and the noble Baroness can accept our position.

As for what the noble Baroness, Lady Royall, said, I am certainly happy to look at the evidence sessions, but I cannot guarantee to bring a change back at Third Reading.

Baroness Barker: My Lords, I thank the Minister for the directness of his answer. The debate takes us back again to the initial founding of the NCS and its independent, distinct and separate nature as a body. We have a fundamental disagreement, because I think that how the NCS delivers its services is central to what it delivers, because it has to work in partnership with the rest of the voluntary sector. It is not the delivery mechanism but how it manages its relationships with all the delivering partners that is absolutely central.

We have a disagreement: the Government wish the trust to act in a highly independent way; some of the rest of us believe that in order to deliver what it says it wants to deliver, it has to take account of the whole of the voluntary sector system within which it operates, even though it will have a different status. We will not reach agreement on this, but I have welcomed the opportunity to put on record a number of very genuine concerns from people in the voluntary sector who do not wish the NCS harm and want it to succeed but who, like me, share some grave reservations about its ability to do so, given the underlying nature of its establishment.

I thank the Minister for the grace and elegance with which he has batted on what I think—he may not—is a somewhat sticky wicket. He has been willing throughout to listen to the criticisms and arguments that we have made and he has answered them as fully as he can. I am not going to get anywhere tonight and I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12 not moved.

Amendment 13

Moved by ***Lord Faulkner of Worcester***

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

"Heritage railways, tramways and inland waterways: NCS Trust programmes

(1) Nothing in this Act shall prevent a young person from working as a volunteer on a heritage railway or tramway or an inland waterway, as part of a programme provided or arranged by the NCS Trust.

(2) In carrying out its functions under this Act, the NCS Trust may not act in a manner which has the effect of preventing a young person from working as a volunteer on a heritage railway or tramway or an inland waterway as part of a programme which is not provided or arranged by the NCS Trust.

(3) In this section—

(a) "heritage railway" and "heritage tramway" have the same meanings as in regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006;

(b) "inland waterway" means an inland waterway owned or operated by the Canal & River Trust or by any other charitable body operating an inland waterway or assisting in the restoration of the same;

(c) "volunteer" means a person who engages in an activity which includes spending time, unpaid (except for any travel and other out-of-pocket expenses), doing something which aims to benefit the heritage railway or heritage tramway or inland waterway concerned; and

(d) "young person" has the same meaning as "child" in section 558 of the Education Act 1996, save that the person referred to must have attained the age of 12 years."

Lord Faulkner of Worcester (Lab): My Lords, I beg to move Amendment 13, which is similar but not identical to the amendment that I tabled in Committee. One important addition is the reference to inland waterways and I am very grateful to the noble Lord, Lord Hodgson of Astley Abbotts, for raising in Committee the subject of young people working as volunteers on canals and other inland waterways. I am particularly grateful to him for putting his name to the amendment tonight.

I do not want to take up the time of the House this evening by repeating all the points that were made in Committee. However, I need to share with your Lordships the serious problem facing industrial heritage activities—particularly on heritage railways—undertaken by young people as volunteers, as a result of an ancient piece of legislation: the Employment of Women, Young Persons, and Children Act 1920. The Heritage Railway Association—and I declare an unpaid interest as its president—has received a very unwelcome opinion from leading counsel that the 1920 Act expressly excludes the employment of children in an industrial undertaking, not only as paid employees under a contract of employment but as volunteers as well. Section 558 of the Education Act 1996 defines a young person as someone who has not reached the age of 16. So, as a classic example of the law of unintended consequences, an Act that was passed in 1920 to prohibit the exploitation of women, young persons and children in an industrial setting has now been found to make unlawful the voluntary engagement of youngsters on worthwhile voluntary activities connected with our industrial heritage.

The ideal solution would of course be to amend the 1920 Act, but it is not possible to do that with this Bill. The best we can do is to make it clear that, when young people are working as volunteers on heritage railways, tramways and inland waterways on programmes organised or supervised by the NCS—my information is that there are likely to be a great many of those—the 1920 Act should not be used to stop them. At present, the law unintentionally prevents young people enjoying the sense of adventure and achievement from involvement with a steam railway, which most noble Lords experienced in their younger days. For some it opens up a lifetime of enthusiastic volunteering; for others it can lead to a career in the industry.

[Lord Faulkner of Worcester]

The supervisory and safeguarding arrangements now in place on heritage railways and other industrial undertakings and the voluntary nature of the engagement makes the provision of the 1920 Act irrelevant. There is no argument about this being a worthy objective. As the noble Lord, Lord Ashton of Hyde, said in Committee:

"We agree that it would be wonderful if a group of young people were to choose a local heritage railway as the focus of their efforts—either to fundraise for it or to spend time on site".

10.15 pm

Indeed, the noble Lord went rather further than that and said:

"I agree that many heritage railways are reliant on volunteers for their maintenance and operation. I also agree that volunteering for a heritage railway can provide young people with many of the skills that the NCS wishes to instil".

I could not agree more. He went on:

"On the noble Lord's concerns about the existing law, I agree that there should be no barriers to young people volunteering their time to support heritage railways".—[*Official Report*, 22/11/16; col. GC 196.]

Given such a strong and supportive statement, I am bound to ask the Minister how he intends to ensure that what he wants to see happen comes about if he is not willing to accept this amendment. I hope we will be able to count on him for his support and on that of other Ministers across the Government in finding a solution to a very significant problem. I beg to move.

Lord Hodgson of Astley Abbotts: My Lords, I was very pleased to add my name to the revised amendment of the noble Lord, Lord Faulkner. Along with most other Members of the Committee, I was astonished to find that the law of 1920, which was no doubt introduced with every good intention of preventing the exploitation of young people, failed to distinguish between working as an employee of Railtrack and volunteering to work unpaid on, say, the Bluebell Line. That seems to me a completely different activity. As we explored this issue a bit further, we found that a similar challenge exists with the canals and waterways because the Government—I cannot remember whether it was this Government or the last Labour Government—very creatively came up with the idea of moving the canals into a new charity: the Canal and River Trust. Free from the shackles of Treasury spending restrictions and with a one-off dowry, the charity now has to stand on its own two feet, both operationally and financially. Given the past shortage of funding, there is a huge backlog of maintenance. To tackle this, and to encourage local communities to take an interest in their local canal for all sorts of purposes such as recreation and running and cycling along the towpath, often in highly industrialised areas, the board of the charity has created local partnerships, which means that the bulk of the work is done by volunteers, many of whom are young people working in their holidays and at weekends.

As the noble Lord, Lord Faulkner, said, the Canal and River Trust, like the railway heritage groups, needs to obtain legal certainty and clarity on its responsibilities regarding the position of young volunteers who work on such activities. If their legal position is uncertain, or worse, I do not know what that means for health and safety and their insurance policies. It seems to me that is a serious problem. I cannot believe that somewhere in the fine print of the relevant insurance policy, it does not say that the policy is void if the policyholder is breaking the law. I cannot believe that an insurance policy will be valid in such a situation. If my noble friend is not able to accept the noble Lord's amendment—glancing over his shoulder at his speaking notes, I think I can see that he is not going to accept it—I hope he will tell us how we can resolve this problem and give us a clear assurance that someone somewhere in government will be tasked with coming up with an answer to the problem, because it cannot be in the interests of NCS, the country or our local communities to have this situation continue. We must have the will to make sure that we sort it out.

Lord Adonis (Non-Afl): My Lords, as a former Secretary of State for Transport, I have to say that until this debate took place this evening I was not even aware that this legal restriction was in place. I am sure that if there was a free vote in the House or indeed in the other place, there would be an overwhelming desire to see this situation change and be subject to proper regulation and health and safety requirements so that young people have the opportunity to volunteer and play their full part in these activities. I cannot think of anything more likely to engage the enthusiasm and wholehearted activity of young people, which is not often so easy to engage, particularly with boys, than not only railways but steam railways, which still hold a particular fascination. I am much more in favour of modern railways and high-speed ones but my noble friend is doing valiant work in keeping our heritage going strong. Of course, these heritage railways are present in all parts of the country. They are among the most exciting and well-visited tourist attractions and play a big part in local communities. This seems a thoroughly absurd and outdated constraint, which, with the wit of parliamentary draftsmen, I am sure it must be possible to find a way through.

Lord Ashton of Hyde: My Lords, I am grateful to the noble Lord for returning us at this hour to the elegant age of steam. As I said in Committee, I am sympathetic to the aims of the noble Lord and my noble friend. We want young people to have access to as broad a range of volunteering opportunities as possible, whether through NCS or other schemes. Heritage railways, tramways and waterways are part of our history and provide opportunities for young people to develop skills. As demonstrated by this new amendment, which relates to heritage railways, tramways and inland waterways, this matter extends beyond the Bill.

The noble Lord, Lord Faulkner, asked what we can do if we do not accept this amendment. My officials have already made contact with the Office of Road and Rail, which, among other things, looks after health and safety and includes heritage railways, to represent his and other noble Lords' views and look into this. The matter is with that body at the moment. For the reasons which have been mentioned on all sides of the House, this potentially extends well beyond the areas we have talked about, and I am sure that there are

many implications which we have not even thought of tonight. Therefore we will not be able to cover this in the Bill in the next week. On that basis, and on the basis that we have extended this question to other areas of government, I hope that the noble Lord will understand and withdraw his amendment.

Lord Faulkner of Worcester: My Lords, I thank the noble Lord, Lord Hodgson of Astley Abbotts, and my noble friend Lord Adonis for their splendidly supportive speeches on the amendment. The Minister's response is more or less exactly what I expected; I was grateful to him for the opportunity to speak informally during the week about the way in which we might address these issues, and I am delighted to hear that contact has been made with the Office of Road and Rail. I am sure that we shall want to explore that route further. I hope that the Government will use their good offices and their best endeavours to bring the parties together to see whether it is possible to come to a solution. The All-Party Group on Heritage Rail met last week and heard a submission from the Rail Minister, Paul Maynard. He was apprised of this issue, and he appeared to be sympathetic, so it has been registered inside the Department for Transport as well. I hope that it will be possible and that, if it cannot be done in the Bill, the Government will be able to use a legislative opportunity to amend the section of the 1920 Act that is clearly causing all this difficulty. However, in that spirit of goodwill and with the approaching onset of the Christmas holiday, I am happy to beg leave to withdraw the amendment.

Amendment 13 withdrawn.

House adjourned at 10.23 pm.

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