Vol. 777
No. 84

Monday
19 December 2016

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Monday 19 December 2016

2.30 pm

Prayers—read by the Lord Bishop of Rochester.

Scottish Government: Welfare
Question

2.36 pm

Tabled by ***Lord McAvoy***

To ask Her Majesty's Government what progress they are making in the transfer of full welfare responsibilities to the Scottish Government as provided for by the Scotland Act 2016.

Lord Foulkes of Cumnock (Lab): My Lords, on behalf of my noble friend Lord McAvoy, and at his request, I beg leave to ask the Question standing in his name on the Order Paper.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, we have made significant progress to transfer the welfare powers in the Scotland Act 2016. Eleven provisions are already in force, including new powers for the Scottish Parliament to create new benefits in devolved areas and top up any reserved benefits. The UK Government remain committed to a safe and secure transfer of powers, and the joint ministerial working group on welfare continues to oversee plans for commencement of the remaining welfare provisions.

Lord Foulkes of Cumnock: My Lords, does the Minister recall that time after time the SNP has asked for powers to mitigate the effects of Tory austerity in Scotland? It now has the tax powers and the welfare powers, but it does absolutely nothing. Does that not confirm that it prefers to moan and whine rather than to accept responsibility?

Lord Dunlop: I certainly recall what the noble Lord says, and I have a degree of sympathy with what he is saying. It is clear that the Scottish Government are having to face up to the reality that demanding the devolution of more powers is not the same as being able to use those powers effectively. If you want to replace existing programmes, you need first to know what you are replacing them with. The Government's priority must be and is to work with the Scottish Government to ensure the safe and secure transfer of devolved welfare powers.

Lord Bruce of Bennachie (LD): My Lords, is it not worth noting that the SNP claimed that it could deliver independence in two years after winning a referendum? It has been in government for over nine years. Should the people of Scotland not welcome the fact that it now recognises that it is not competent to take over the welfare responsibilities, not least because it is failing to meet outcomes and targets on education, health, transport, justice, policing, and local government—indeed, on everything? It is really time that it recognised that it is not up to the job.

Lord Dunlop: I certainly think that the realities of devolving welfare powers put into context the assertion of the then First Minister of Scotland, who said that an independent Scottish state could be established within 18 months. We have seen some of the domestic policy record; two weeks ago, we learned that Scotland's schools had recorded their worst ever performance in PISA tests since those were set up in the year 2000. This underlines why the Scottish Government should perhaps spend less time searching for new reasons to hold another independence referendum and more time on the day job.

Lord Cormack (Con): My Lords, have they not proved that you cannot fill a void with a vacuum?

Lord Dunlop: I am inclined to agree with my noble friend.

Brexit: World Trade Organization Rules
Question

2.39 pm

Asked by ***Lord Spicer***

To ask Her Majesty's Government what assessment they have made of the impact of the acceptance of World Trade Organization standard rules on the United Kingdom's negotiations for leaving the European Union.

The Minister of State, Department for International Trade (Lord Price) (Con): The United Kingdom is a founding member of the World Trade Organization. The UK is fully compliant with all the rules of the WTO and will continue to be as we leave the European Union. This has no bearing on the UK's exit negotiations.

Lord Spicer (Con): My noble friend will be aware that air service agreements do not fall within the remit of the WTO. When we come to leave the European Union, undoubtedly there will be major negotiations to ensure and preserve open skies in Europe. Will those be a good example of the negotiations that will have to take place outside the Brexit negotiations and therefore outside the timetable set by Article 50?

Lord Price: My noble friend is right that a whole host of service agreements fall outside the WTO arrangements. The Department for Exiting the EU and the Department for International Trade are aware of those and will work diligently to ensure continuity when we exit the EU.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government agree with the Civitas research which finds that, if we are forced to accept WTO tariffs, EU exporters will pay some £13 billion per annum on their exports to us while our exporters will pay only some £5 billion on their exports to the single market? Given that the EU also has some 3 million more jobs through selling things to us than we have through selling things

[Lord Pearson of Rannoch]
to the single market, is it not in the interests of the people of the EU, as opposed to the Eurocrats in Brussels, not to interfere with any of this but to agree to carry on as we are?

Lord Price: The noble Lord mentions some research. At the moment much research and many figures are bandied around, all based on assumptions about a future which right now none of us is clear about. However, I can agree with the noble Lord that any disruption in trade will be to the disadvantage of people both in Europe and in the UK, of whom there are 500 million. That is why this Government have talked about a smooth path to the new order post-Brexit, and we will work diligently to achieve that.

Lord Purvis of Tweed (LD): My Lords, it is exactly six months this week since the referendum and we are still waiting for the Government to be clear about their stance on the customs union. We are also still awaiting urgent clarification, for which last week's Lords Committee report specifically asked, of the legal position regarding when the UK can start negotiating any trade agreements—while we are discussing the exit terms with the European Union, or afterwards. When will the Government provide that legal clarification? It does not have to wait on any of the politicking we have seen in the last week, with the Secretary of State talking about making a case in Cabinet rather than in Parliament.

Lord Price: My Lords, we are very clear on the position. We are clear that, while we are a member of the EU, we cannot negotiate or sign free trade agreements but we can have exploratory discussions, which we are having at the moment. Once we leave, we will be free to negotiate and sign free trade agreements for the United Kingdom.

Lord Hannay of Chiswick (CB): When considering the question asked by the noble Lord, Lord Pearson of Rannoch, does the Minister recognise that it is not Governments who pay tariffs when they are imposed but manufacturers and consumers, and that British consumers will either pay tariffs or have to pay higher prices for products if the very unacceptable and unwelcome situation were to arise in which WTO rules had to be applied by default?

Lord Price: My Lords, the Government have set out their position: we do not wish to apply tariffs; we wish to be a free trading nation, and that is what we will work towards. We will try to ensure continuity of approach for our businesses, for the EU and for third-party countries. That is what we are trying to achieve right now.

Lord Howarth of Newport (Lab): My Lords, given that the proportion of total UK exports going to the EU has fallen from over 50% 10 years ago to around 40% now, should not our continuing strategy, both as a Government and as an industrial nation, be to continue to increase the proportion of our exports that go to areas of the global economy that have better growth prospects than, unfortunately, the EU does? Has the Minister noticed the noises coming recently from the United States of America, Australia and South Korea encouraging us to do precisely that?

Lord Price: I agree with the noble Lord that our ambition should be to increase our exports. At the moment the UK, regrettably, bats below where it should. We are sixth in the league table, below France and Germany, and we hope to rise above that through a number of initiatives. Pursuing all trade options with all countries should be the Government's approach, to make it easy and straightforward for businesses to export and to make sure that we are equally open to other businesses, both in the EU and elsewhere, which want to export into the United Kingdom.

Lord Howell of Guildford (Con): My Lords, further to my noble friend Lord Spicer's question, as we are now told that more than half the total earnings of world exports come from services, intellectual property, information products, digital transfer and shared processes and not from traditional goods transfer, are we not reaching the point where the WTO rules—let alone the more outdated rules of the former single market and the customs union, which belong to past trade patterns—are of decreasing relevance to our trade prospects?

Lord Price: The noble Lord is certainly right that services are an increasingly important part of the UK economy, representing 80% of our GDP and 40% of our exports to the EU. However, I would not want to diminish the importance of goods transfer. The north-east of England is the second largest exporter of cars in the EU—it exports more cars than Italy. It is important for us to hold on to the fact that we produce goods in the UK and export goods from the UK. That must not be diminished as we pursue our agenda to increase our services around the world.

Lord Stevenson of Balmacara (Lab): My Lords, I have listened to the Minister carefully but I am still not clear what the Government's position is. Mr Fox is openly briefing that WTO arrangements would be quite satisfactory. Mr Hammond commented recently that the WTO option would not be the most favoured outcome. Which is it? Can the Minister say precisely?

Lord Price: As the noble Lord knows well, the Government are still working towards their position for Article 50. They take in views from all sides. As I understand it, we have 20 different Select Committee reports coming to the Government in January alone. I have visited 21 countries over the past four months and I have spoken to 200 businesses and over 2,000 business people. We are open to listening to all parts of the debate and I welcome the report from the noble Lord, Lord Whitty, and this House, which was considered and thoughtful.

Lord Leigh of Hurley (Con): What capacity does my noble friend's department have for these negotiations in terms of experienced and competent negotiators?

Lord Price: In June of this year, the Trade Policy Group had 45 people working in it. We have now quadrupled that number, and we plan to increase it

further next year to around 300 people. More than 1,000 people from outside have applied to work in the department, feeling that it is an exciting place to work at this time.

Lord Newby (LD): My Lords, the Minister said that we would be able to negotiate our own free trade agreements once we have left the European Union. Does that mean we will not be part of the customs union—we would not be able to negotiate our own free trade agreements if we were—and, if so, why did the Secretary of State for International Trade say yesterday that he was rather taken by the Turkish agreement which involves being part of the customs union?

Lord Price: I can only repeat what has been said in the Statements of my noble friend Lord Bridges to this House on a number of occasions, which is that the Government have not reached a position and are considering all options. Until they do so, we will not be in a position to reveal our plans further.

Lord Anderson of Swansea (Lab): My Lords, can the noble Lord cite any precedents for being part in and part out of the customs union?

Lord Price: I am aware that Turkey has arrangements whereby agricultural goods and food products are excluded from the goods provision, but that obviously does not include services.

Lord Foulkes of Cumnock (Lab): My Lords, is it not becoming increasingly clear that day by day and week by week, Nigel Farage, Michael Gove, and to be fair, Gisela Stuart, have got us into an unholy mess? We do not know where we are on trade, on the movement of labour—or indeed on anything. Would not the billions of pounds we are spending on trying to organise this Brexit be better spent sorting out the crisis in social care?

Lord Price: The people of the United Kingdom were very clear when they voted on 23 June. Harping back does none of us any good and it does not do the United Kingdom any good. We need to move forward in a united way to get the best deal for the United Kingdom.

Lord Dubs (Lab): My Lords, can we move forward in a united way if Cabinet Ministers are putting forward different points of view? I was brought up to understand that the Government speak with one voice. Surely these arguments should be kept within the Cabinet instead of being ventilated publicly?

Lord Price: I come from the world of business and what we believe in is having boards with different experiences and whose members are able to express different views in a measured and considered way. I believe that that is exactly what is happening. Along with input from this House and the other place, as well as from businesses, that will lead us to the most considered and beneficial outcome for the United Kingdom.

Lord Hamilton of Epsom (Con): Does my noble friend accept that there is nothing the Opposition can teach us about having differing views on one subject or another?

Lord Price: I agree.

Artists: Workspaces in Cities

Question

2.51 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what steps they are taking to ensure the provision of artists' workspaces in major cities.

The Parliamentary Under-Secretary of State, Department for Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, high-quality and affordable workspace is essential to ensuring that we can retain our finest creative talent. The Government encourage local authorities and property owners to make spaces available for cultural activities. Arts Council England supports artists' spaces through funding and brokering partnerships. For example, Bristol's Spike Island, which is supported by the Arts Council and Bristol City Council, provides subsidised workspace and offers opportunities to make national and international connections as well as peer support and collaboration.

Lord Clement-Jones (LD): My Lords, I welcome what the Minister has said. The Old Gas Works in Fulham, for example, hosts a vibrant community of more than 200 creative artists and artisans. However, it is now under severe threat, as are many such workspaces across the country, as a result of rising property prices and upmarket residential property development. Can the Minister commit to exploring policies that are designed to save these workspaces, which are so vital to Britain's cultural and creative future, and provide affordable new spaces through creative enterprise zones, the innovative use of public sector property, rate relief and support for creative land trusts?

Lord Ashton of Hyde: My Lords, the Government believe that funding decisions are best made at the local level. We think that local authorities are best placed to decide how to prioritise their spending. However, many local authorities do recognise the value of culture and are still prepared to invest in it because they realise that it brings huge gains. Arts Council England and DCMS are committed to working with local authorities and other partners to encourage the development of affordable workspaces, including through bodies such as creative arts trusts. For example, Arts Council England gives regular funding to Bow Arts Trust which is a GLA example of best practice and partnered by the London Borough of Newham. As well as providing affordable artists' workspace, it provides learning and participation programmes.

The Earl of Clancarty (CB): My Lords, is the Minister aware that what is new is that artists are being forced out of London altogether which is surely not good for the cultural or communal health of the city? This is in

[The Earl of Clancarty]
contrast to Berlin, for example, where rent capping encourages artists and others to live and work within the city.

Lord Ashton of Hyde: My Lords, we do not want artists to have to move anywhere if they do not want to. That is why I mentioned an example of where we are partnering and using Arts Council England money. But actually it is an ambition of the Government to move more away from London so more Arts Council England money is going to be spent outside London—the Great Exhibition of the North is an example.

Lord Geddes (Con): My Lords, how does my noble friend define "artists" in the context of this Question?

Lord Ashton of Hyde: Someone who participates in arts.

Baroness Jones of Moulsecoomb (GP): My Lords, it is not only artists' space being swept away; it is also small businesses such as breweries and metalworkers—businesses that contribute to a local area. Before the Olympics, we saw a lot of small businesses swept away because of the pressure of housing. Is it part of the Government's industrial strategy to maintain some affordable space, perhaps within industrial sites?

Lord Ashton of Hyde: I completely agree with the noble Baroness. As noble Lords will be aware, the Culture Secretary is on the economy and industrial strategy committee of the Cabinet. We would support more than just artists but craft bakers and local industries. We have been doing that in the north—for example, in Newcastle. The Great Place scheme, mentioned in the *Culture White Paper* and on which the Government spent £15 million, is helping in that regard and is all to do with creating vibrant communities with local arts and industries.

Baroness McIntosh of Hudnall (Lab): My Lords, it has become rather unfashionable to speak up for London, but it is worth remembering that London is a great capital city and is known worldwide for its cultural riches. Of course, it has many great institutions, which are a big draw for tourism and for our home market, but it also needs the small, innovative creative and cultural businesses referred to earlier. If they are starved out of London either by the cost of property or by strategy, be it from government, Arts Council England or anybody else, does the Minister agree that ultimately the cultural heritage of London will be diminished?

Lord Ashton of Hyde: I agree. This is one of the world's great cities. One reason for that and for so many people coming to visit it is its vibrant arts scene. All I was saying to the noble Earl was that we want to shift the balance a bit to increase funding outside London. It is part of the tourism strategy as well to show foreign visitors that there is more to this country than just London, albeit that London is a great city.

Baroness Grender (LD): My Lords, does the Minister agree with Josh Baum, a poet from Hackney, who gracefully defines the issue by saying:

"When you see the Waitrose vans driving round the corner, you know the end is coming"?

Will the Minister commit to the Government working with local authorities and in particular the Mayor of London, to ensure that a healthy combination of artists, workspaces and Waitrose vans happily co-exists?

Lord Ashton of Hyde: I found it a bit difficult to hear some of that Question because my noble friend Lord Price was chuckling due to the reference to his prior existence. We want a mix of arts, culture, Waitrose and any other supermarket we can think of.

Lord Stevenson of Balmacara (Lab): My Lords, is this not becoming almost an art in itself—spinning an answer out of nothing? This is all about money. Arts Council England had its funding cut by 36% and has 10% more to go. Local authorities have seen a 56% reduction in their government grant. The Minister has talked about funding decisions best being made at a local level. Well, I wish him well with that.

Lord Ashton of Hyde: My Lords, the noble Lord will be aware that arts and heritage funding since 2009-10 increased by 9% from £627 million to £683 million in 2014-15. I agree that local authorities have had to make difficult choices, but Arts Council England will invest £1.1 billion of public money from government and an estimated £700 million from the National Lottery between 2015 and 2018.

Brexit: Invocation of Article 50

Question

2.59 pm

Asked by ***Lord Dykes***

To ask Her Majesty's Government when they expect to announce the exact date in 2017 when Article 50 will be invoked.

Baroness Goldie (Con): My Lords, the Prime Minister and the Secretary of State have set out the clear timetable for triggering Article 50 by the end of March 2017. This is giving us the time to develop our negotiating strategy and avoid setting the clock ticking until our objectives are clear and agreed.

Lord Dykes (CB): My Lords, does not the Minister agree that for millions of Britons, patriotism and Europeanism go side by side? What on earth does a,

"red, white and blue Brexit"

actually mean? Is red for the millions of dead in two world wars followed by six decades of peace in the European Community? Does white indicate the slide into xenophobia, particularly in England? Is blue just for the Tory interest, nowadays with a very small membership base supported by less than a quarter of voters in the last election?

Baroness Goldie: It is important to remember the genesis of why we are where we are: the expression of a democratic view, in a referendum, that the Government are instructed to leave the European Union. That is not straightforward—it is challenging, as this House is

well aware—but the Government are committed, in discharging that obligation, to doing whatever is necessary to protect the best interests of the whole of the United Kingdom.

Lord Pearson of Rannoch (UKIP): My Lords, do the Government accept that Article 50 is only a clause in an international treaty and so, if the Eurocrats try to use it to our disadvantage, it should not be allowed to compromise the will of the British people as expressed in a referendum and an Act of Parliament?

Baroness Goldie: The noble Lord will be aware that I have on numerous occasions in this House reiterated my respect for the electoral will of the voters of this country in their referendum declaration, and I think that it has to be honoured by the Government. Article 50 is part of our European relationship. That is why the matter is currently litigious: the High Court took a view with which the Government disagreed and the matter now rests with the Supreme Court.

Lord Garel-Jones (Con): It is indeed the case that the result of the referendum places an obligation on Her Majesty's Government to initiate these negotiations, and that any attempt to use the triggering of Article 50 to delay or frustrate that process would be mistaken. However, that said, is it not also clear that the outcome of these negotiations is totally unknown and the Government cannot expect Parliament to say that we will agree to whatever that outcome might be? When we know that outcome, does my noble friend agree that it must be put to Parliament for approval?

Baroness Goldie: Both the Prime Minister and the Government have been clear that of course there is a role for Parliament in the process of exiting the EU. We are committed to extensive involvement by Parliament, which is already happening both in the other place and in this Chamber. It is important to underline that the Government will be mindful of all their legal and constitutional obligations in the process and will honour them in any future agreement with the EU.

Lord Watts (Lab): My Lords, would it not have been a good idea for the British people to have understood the decision they were making before the referendum took place?

Baroness Goldie: My Lords, I have often wondered, particularly coming from Scotland as a Conservative, what motivated voters in their electoral instincts when casting votes at elections. In a democracy, we have to recognise and respect the right of individual voters to look at the issues, make their decision and come to a view. That collective view as expressed in the referendum places an obligation upon the Government to discharge that result.

Baroness Ludford (LD): My Lords, the glaring lack of clarity on a Brexit plan six months after the referendum means, in the words of the *Financial Times* on Saturday, that the Government are,

"giving businesses that rely on single market access little choice other than to act on their worst-case scenarios",

that there will be a crashing out of the single market. What does the Minister say to those whose jobs will be lost due to her Government's dithering?

Baroness Goldie: I think the noble Baroness is displaying a degree of uncharacteristic impatience, which I do not associate with her, and being unduly pessimistic. In fact, there are some very encouraging signs that we can make a success of Brexit. She will be aware that the Japanese technology firm SoftBank has announced a record £24 billion investment in the UK as it moves to buy microprocessor manufacturer ARM, and GlaxoSmithKline has announced a massive investment of £275 million. There are very encouraging signs and we should be heartened by that.

Lord Flight (Con): My Lords, would my noble friend agree with me in regretting certain aspects of behaviour by the Commission, such as deliberately cold-shouldering the Prime Minister and not inviting her to dinner and then claiming £50 billion in expenses? This sort of behaviour is not constructive to arranging a sensible deal with Europe going forward.

Baroness Goldie: Any negotiation, whether commercial, domestic or under international treaty law, such as this one, is never going to be easy and there will be various emotions prevailing at any one time. As far as I can detect, the important fact to recognise is that the Government of this country are determined to negotiate the best deal they can for this country and the EU is cognisant of the enormity of that decision and wishes also to co-operate in trying to make these negotiations as constructive as possible and recognise the mutual interest, not just to the United Kingdom but for the remaining states in the EU.

Baroness Smith of Basildon (Lab): My Lords, perhaps I may return to the original Question about the date that Article 50 will be announced. It is a crucial decision, and I do not think that the noble Baroness answered the Question. That date sets the countdown clock to our exit from the EU. Twenty-seven other countries will have to agree the negotiations, so it will not be two years that we have but significantly less—it could be 15 or 17 months. Given that timescale, it is normal government and business practice to have a plan. When will the Government share their plan on both how they will conduct the negotiations and the basis of those negotiations?

Baroness Goldie: I thank the noble Baroness for her question. The Government will set out their broad plans before triggering Article 50 by the end of next March. Indeed, she will be aware that in the other place, following a debate on 12 October, there was an important caveat, which the House agreed without Division, that nothing we do or say should undermine the UK's negotiating position. We must acknowledge that and await details of the plan.

European Union Committee

Membership Motion

3.07 pm

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

That Lord Woolmer of Leeds be appointed a member of the Select Committee.

Motion agreed.

Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2016

Motion to Approve

3.07 pm

Moved by ***Lord Dunlop***

That the draft Regulations laid before the House on 2 November be approved.

Considered in Grand Committee on 12 December.

Motion agreed.

Policing and Crime Bill

Third Reading

3.08 pm

Lord Taylor of Holbeach (Con): My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Policing and Crime Bill, has consented to place her interests, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

Clause 161: Requirement to state nationality

Amendment 1

Moved by ***Baroness Hamwee***

1: Clause 161, page 174, line 34, after "constable" insert "reasonably"

Baroness Hamwee (LD): My Lords, Amendments 1 and 2 deal with the same issue and are amendments to clauses requiring people to state their nationality when an immigration officer or constable suspects that an individual may not be a British citizen. Underlying our amendments is a concern that these powers may be exercised on the part of law enforcement officers in a discriminatory fashion. Suspecting that someone "may" not be British is a low hurdle.

At the previous stage, the Minister said that,

"it is already the case that officers may only ever act on reasonable grounds when exercising their powers".—[*Official Report*, 12/12/16; col. 1012.]

That sounds all well and good, but if that is the case then why, in closely comparable provisions in Section 43 of the Immigration Act of this year, is there the formula:

"if the officer has reasonable grounds for believing"?

That formula is used in the case of requiring someone to provide a driving licence if he is suspected, or, as I say, if there are reasonable grounds for believing him to be not entitled to drive in the UK. Belief, as in the Immigration Act, is, as I understand it, in itself a higher hurdle than "suspicion", but earlier this year it was considered that the formula which I have quoted was appropriate—both belief and reasonableness.

I was grateful for the support of the noble Lord, Lord Kennedy, during the previous stage. He made a substantive point about the term "reasonable". Given the constraints of Third Reading, my amendments today are based on what might be called a technical point: that there is, as a matter of legal construction, a lower test to be applied under the Bill than under the Immigration Act. Two provisions which mean the same thing should be expressed in such a way as to indicate that. If they are expressed differently, there must be an implication—I hesitate to say this, given other noble Lords who are sitting around the Chamber—that they do not mean quite the same thing. To be told that we should base the point about reasonableness on what I think comes from the relevant PACE code does not, I am afraid, satisfy me. I probably took the Minister by surprise by making this point at the previous stage, but I hope that she may be able to answer the point, or better still to agree to the amendment.

This amendment also enables me to refer to a commitment given during the passage of the Immigration Bill, when we discussed the provision to which I have just referred. My noble friend Lord Paddick and the noble Baroness, Lady Lawrence of Clarendon, were very much involved with this issue and meetings were held with the then Minister, the noble Lord, Lord Bates. I think that he was as concerned at the possible misapplication of the provision as we were, and we had quite a long meeting to discuss it. He offered this in debate:

"I would … like to make sure, when the consultation document is published",

on that provision and the piloting of it, "that we reconvene", and that the noble Baroness and my noble friend should,

"meet with officials again … to get the noble Lord's and the noble Baroness's perspective on that. How the pilot scheme will be framed will also be looked at. Again, we would value the noble Lord's and the noble Baroness's perspective. We will make sure that that happens before they are brought forward and placed in the Library, and before the pilot commences".—[*Official Report*, 15/3/16; col. 1772.]

At the last stage, we heard that the provisions under the Immigration Act on the production of drivers' licences were to be piloted. It was not known at that time whether that would be a pilot in conjunction with the pilot which is provided for in this Bill. I hope the Minister can give us assurances about wide consultation, including about where the pilots should take place. She was able to tell the House that one pilot would be in Hampshire, which everyone to whom I have mentioned it has reacted by saying that it is not a very helpful place to show whether the provisions might be used in a discriminatory fashion. That is a substantive point and I hope the Minister can assist on it, but at this late stage of the Bill I base the amendments on the technical point of comparison with the Immigration Act. I beg to move.

3.15 pm

Lord Kennedy of Southwark (Lab): My Lords, as the noble Baroness, Lady Hamwee, said, these amendments were discussed on Report a few days ago. Amendments 1 and 2 add the world "reasonably" to this section of the Bill requiring someone to confirm their nationality. In that discussion, I made the point that in this section of the Bill the wording "without reasonable excuse" is used in respect of suspects in new Section 43B(1) and again in new Section 46C(1), and on that page there is also "for a reasonable cause".

That is different from the provisions for police and immigration officers. I asked the noble Baroness, Lady Chisholm, to write to me, and I think she was going to, but I have not yet had the letter. It is on its way. That is good to know. When she replies, I hope she will shed some light on why the Government do not need the same provision for both groups in this part of the Bill.

Baroness Chisholm of Owlpen (Con): My Lords, these amendments again seek to provide in the Bill that a police or immigration officer exercising the powers in Clauses 161 and 162 to require a suspected foreign national to state their nationality and provide their nationality documents on request must act reasonably.

I am grateful for the opportunity to clarify the Government's position. On Report, the noble Lord, Lord Kennedy, suggested that the drafting of these clauses seemed inconsistent, given that, on the one hand, there was no express requirement on an officer to exercise the powers reasonably but, on the other hand, the defence operated only where the accused had a reasonable excuse. There is no inconsistency here. The reasonable excuse defence is a necessary safeguard which allows a suspected foreign national to offer legitimate reasons to an officer and, if necessary, a court, for their non-compliance. This might include, for example, circumstances where a document may have been destroyed with reasonable cause—a scenario which is also catered for elsewhere in immigration legislation. The requirement for officers to act reasonably in the first instance is, in the Government's view, a quite different point.

I acknowledge that there are some variations in the drafting of the large number of existing Acts which set out UK immigration law. It is also accepted that certain actions in the Immigration Act 2016 explicitly require those exercising coercive powers to act reasonably. However, it is not the case that, in the absence of an explicit reference to that effect, officers are able, through that omission, to act unreasonably. This language is not universally applied, or required, nor is it used elsewhere in legislation which deals with the seizure or retention of nationality documents.

In exercising the powers conferred by Clauses 161 and 162, police and immigration officers must act in accordance with public law principles, which include acting reasonably, or they may be challenged in the courts by means of judicial review. I also note that the wording of these clauses is consistent with that used elsewhere in immigration legislation—for example, Section 17 of the asylum and immigration Act 2004, which uses the same language for similar purposes. Section 17 deals with the retention of documents that come into the possession of the Secretary of State or an immigration officer in the course of exercising an immigration function.

Finally, I should add that operational guidance in respect of these new powers will make it clear to officers the circumstances under which these powers may be exercised. In the light of this further assurance that these powers may be exercised only when an officer has a reasonable suspicion that an arrested person may not be a British citizen, I hope that the noble Baroness will be content to withdraw her amendment.

However, I will just add a couple of things: of course we are very happy to continue to engage with the noble Baroness as our plans for pilots develop; she is also right that Hampshire was one of the places that was suggested for the pilot.

Lord Kennedy of Southwark: Before the noble Baroness sits down, did I hear her correctly say that these powers can be exercised only when an officer has a reasonable suspicion? If that is the case, then I do not see why it should not be in the Act and this amendment accepted.

Baroness Chisholm of Owlpen: We take the view that the police should always act in a reasonable way.

Baroness Hamwee: I think that encompasses our arguments.

With regard to the pilots, I am grateful for the noble Baroness's assurances, but had there been consultation on the choice of Hampshire, she might have had some useful input.

I do not know whether the noble Baroness is in a position to tell us whether there is a distinction between an immigration officer or constable "suspecting" under these clauses in the Bill and an officer having "reasonable grounds for believing". Are these different tests? It seems to me that suspecting and having reasonable grounds for believing are not the same, but I think she is telling us that they are. Does she have anything that she is able to add?

Baroness Chisholm of Owlpen: I am slightly muddled by what the noble Baroness is saying. Could she explain that a bit more?

Baroness Hamwee: I take the point that different formulae are used in different parts of immigration law, but the Immigration Act to which I have referred provides for an officer to have "reasonable grounds for believing" something, while under this Bill, he simply has to "suspect" something. "Reasonable grounds for believing" seems to me to be a much tougher test than simply suspecting. The noble Baroness may have something she can share with the House on that.

Baroness Chisholm of Owlpen: Suspecting and believing are slightly different words, obviously. Perhaps I had better write to the noble Baroness with more clarification.

Baroness Hamwee: My Lords, I wonder whether this is something that we can add to the discussion or consultation on the pilots. If one is going to pilot two provisions in the same place, carried out by the same officers and prompted no doubt by the same observations, it would be quite interesting to have them either able or not able to require documents from the same people, but not able to do so because in one case the ground applies and in the other it does not. I realise we are getting into very fine detail, but it will be very real detail in the application. It is not the noble Baroness's fault, but I can see that we are not going to be able to make further progress on this today. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 162: Requirement to produce nationality document

Amendment 2 not moved.

Clause 166: Posthumous pardons for convictions etc of certain abolished offences: England and Wales

Amendment 3

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

3: Clause 166, page 181, line 23, leave out subsection (4) and insert—

"(4) The list of offences in subsection (3) is to be read as if it also included the corresponding service offences and, for that purpose, the corresponding service offences are—

(a) an offence under an enactment set out in subsection (4A) which is such an offence by virtue of any of the enactments mentioned in subsection (3);

(b) an offence under section 32 of 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy);

(c) an offence under section 29 of 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy);

(d) an offence of sodomy mentioned in, and punishable under, section 38 of the Naval Discipline Act 1860, section 38 of the Naval Discipline Act 1861, section 41 of the Naval Discipline Act 1864 or section 45 of the Naval Discipline Act 1866.

(4A) The enactments referred to in subsection (4)(a) are—

(a) section 45 of the Naval Discipline Act 1866;

(b) section 41 of the Army Act 1881;

(c) section 41 of the Air Force Act 1917;

(d) section 70 of the Army Act 1955;

(e) section 70 of the Air Force Act 1955;

(f) section 42 of the Naval Discipline Act 1957."

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I shall not keep the House long with these amendments. Noble Lords will recall that on Report my noble friend Lord Lexden questioned why the list of service disciplinary offences in what is now Clause 166 did not include all historic enactments criminalising buggery in the Armed Forces. I would like to thank my noble friend for bringing this matter to the Government's attention. Having examined it further, we agree that the list of naval offences should reach back to the Navy Act 1661. I should stress that the various enactments cited in Amendments 3 to 6 include offences which would still be covered by the criminal law today, notably bestiality. Accordingly, it is important to emphasise again that these posthumous pardons would be granted to a person convicted of an offence only where their actions would not be illegal under current law.

We are aware that that there may be parallel offences that applied to Army personnel which predate the Army Act 1881. In the time available since Report we have not been able to identify all the relevant statutes, but we are continuing to research this issue. If there are further offences to be added to the list, we will explore the best means of achieving this.

The other amendments in this group are minor technical and consequential ones. I beg to move.

Amendment 3 agreed.

Amendments 4 and 5

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

4: Clause 166, page 181, line 37, at beginning insert "Subject to subsection (6A),"

5: Clause 166, page 181, line 43, at end insert—

"(6A) The definition of "service disciplinary proceedings" in section 101(1) of the 2012 Act applies in accordance with subsection (6) with the modification that it also includes any proceedings (whether in England and Wales or elsewhere) under—

(a) 13 Chas. 2 c. 9 (1661) (An Act for the regulation and better government of the navy),

(b) 22 Geo. 2 c. 33 (1749) (An Act for amending and consolidating the laws relating to the navy), or

(c) the Naval Discipline Act 1860, the Naval Discipline Act 1861 or the Naval Discipline Act 1864."

Amendments 4 and 5 agreed.

Clause 168: Power to provide for disregards and pardons for additional abolished offences: England and Wales

Amendment 6

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

6: Clause 168, page 183, line 12, leave out "(6)" and insert "(7)"

Amendment 6 agreed.

Clause 192: Commencement

Amendments 7 to 11

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

7: Clause 192, page 216, line 22, leave out from "order," to end of line 24

8: Clause 192, page 216, line 28, leave out from "order," to end of line 30

9: Clause 192, page 217, line 4, after second "subsection" insert "(2) or"

10: Clause 192, page 217, leave out lines 16 to 18

11: Clause 192, page 217, line 28, at end insert—

"( ) The powers conferred on the Department of Justice in Northern Ireland by subsections (2), (4), (10) and (12) are exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12))."

Amendments 7 to 11 agreed.

Schedule 1: Provision for police and crime commissioner to be fire and rescue authority

Amendment 12

Moved by ***Lord Rosser***

12: Schedule 1, page 232, line 28, at end insert—

"(1A) Material published under sub-paragraph (1)(d) must include—

(a) copies of each document provided by the commissioner;

(b) copies of each representation made for the purposes of sub-paragraph (1);

(c) a summary of the views expressed to the commissioner for the purposes of sub-paragraph (1);

(d) the commissioner's response to those representations and views;

(e) the commissioner's representation of why the benefits of a proposal under paragraph 1 cannot be achieved by other forms of collaboration.

(1B) The consultation period must last for at least 56 days.

(1C) Before the start of the consultation period the commissioner must—

(a) produce a draft public proposal for the purposes of paragraph 1;

(b) schedule public meetings with reasonable publicity;

(c) invite written submissions."

Lord Rosser (Lab): My Lords, Amendment 12 is in essence the same as our Amendments 12 and 14 on Report, which we withdrew in the light of the Minister's response. In accordance with that response, I have since received a letter from the Minister that covers guidance on a PCC's business case and consultation arrangements, and on the terms and conditions of fire personnel transferring to PCC fire and rescue authorities and to chief officers under the single-employer model.

My purpose in tabling this amendment at Third Reading is to ask the Minister to cover the content of her letter to me in her response today so that it is on the record in *Hansard*. The letter said that government Amendment 11 on Report meant that,

"the PCC would always be required to publish a response to their consultation, regardless of whether they have local agreement or not",

and, crucially, that,

"the guidance will fully reflect the issues covered by your amendments 12 and 14",

on Report, which are now reiterated in Amendment 12, which we are now discussing at Third Reading. The letter also said:

"Whilst this guidance will be owned and issued by APACE"—

the Association of Policing and Crime Chief Executives—

"Home Office officials are part of an advisory group that has been set up to steer the development of the guidance and are working closely with the authors to ensure that it reflects Government's expectations".

In other words, the guidance reflecting the Government's expectations will fully reflect issues covered by our Amendments 12 and 14 on Report, which are repeated now in Amendment 12, which we are now discussing at Third Reading.

If the Minister can place on record in *Hansard* the key parts of the letter that she sent me following Report, then from my perspective that would achieve the purpose of this amendment. In particular, confirmation of the points that I have just made, and which are referred to in the letter, about the guidance fully reflecting the issues covered by my Amendments 12 and 14 on Report, and the fact that the guidance will reflect the Government's expectations, would be extremely helpful.

Baroness Hamwee: My Lords, I am glad that the noble Lord has dealt with the matter as he has and has sought to have the points put on record. I wonder whether, in replying, the Minister can confirm that in paragraph 3(d), the requirement on the commissioner to publish,

"in such manner as the commissioner thinks appropriate",

is consistent with the description that the noble Lord has just given—and that, within statute, one cannot think something "appropriate" without it also being "reasonable".

3.30 pm

Baroness Williams of Trafford: My Lords, the noble Lord, Lord Rosser, has explained his amendment and the reasoning behind it. I am very happy to repeat the assurances that I laid out in my letter so that they now appear in *Hansard*.

I recognise the important principles behind the amendment and I agree that it is imperative that PCCs afford sufficient time during the consultation process to allow people properly to express their views and to provide sufficient material for them to form a proper opinion. However, it would not be appropriate to prescribe how PCCs should go about their consultation in the Bill; nor would it be appropriate for the Home Office to issue guidance on such matters. PCCs are locally accountable, and it would not be appropriate for Whitehall to dictate matters or fetter local flexibility.

I hope that the noble Lord would therefore agree with me that the points he has raised are properly a matter for guidance rather than for primary legislation—I think that was clear from what he said. As I set out on Report, the circumstances of each local consultation will be different, so we should not unduly fetter local flexibility to put in place proportionate arrangements that recognise the nature of each local business case. The amendment, while well intentioned, risks cutting across the local accountability of PCCs and risks Whitehall dictating matters that should rightly be left to local leaders.

In response to the noble Lord's important concerns, I can, however, be very clear about the Government's expectation that the PCC's consultation will be undertaken in an appropriate manner and of an appropriate duration to allow local people to express their views and for the PCC to have taken them into account. There is plenty of case law relating to consultations of the kind that PCCs will be undertaking on their local business cases, and to discharge their formal statutory duty, PCCs will need to have regard to proper principles of consultation. We would expect PCCs to secure local legal advice prior to commencing a local consultation to ensure that their plans comply with the legal requirements set down by existing case law. On the point made by the noble Baroness, Lady Hamwee, about consistency, I reiterate what I said privately: I think there is consistency.

To further strengthen the advice available to PCCs, we are also working with the Association of Policing and Crime Chief Executives to ensure that its practice guidance on fire governance business cases covers the points that the noble Lord has listed in his amendment today and his previous Amendments 12 and 14. This includes comprehensive guidance on the duty to consult, the manner in which consultation should be carried out, its duration, and what arrangements PCCs should make to publish their response to the consultation.

[Baroness Williams of Trafford]

The Government expect the guidance to address the matters to be covered in the PCC's business case. By its nature, this must set out the PCC's assessment of why he or she considers that it would either be in the interests of economy, efficiency and effectiveness, or in the interests of public safety, for a Section 4A order to be made. If the PCC's proposal is based on the first limb of this test, it would follow that the business case needs to address why other forms of collaboration, outside of a governance transfer, cannot deliver the same benefits in terms of improved economy, efficiency and effectiveness.

The guidance is currently being drafted by a working group that includes representations from fire and rescue authorities and the Local Government Association. The Association of Policing and Crime Chief Executives is aiming to publish the first version in January 2017, shortly after Royal Assent. The document will continue to be updated to reflect the lessons learned from the first PCCs to develop and consult on their proposals. As it will be sector guidance, it will not be subject to any parliamentary procedure but, as I have just explained, it will be in line with the Government's expectations. I commit also to sharing a copy of the guidance once it is finalised.

I hope that in light of these further assurances the noble Lord will feel content to withdraw his amendment.

Lord Rosser: I thank the Minister for her reply. I take it from what she has said that the guidance will reflect the Government's expectations, which are that the guidance will fully reflect the issues covered by our Amendments 12 and 14 on Report and our Amendment 12 at Third Reading. Will the Minister confirm that once again?

Baroness Williams of Trafford: I apologise for being slightly distracted by the last thing the noble Lord said, so could he repeat it?

Lord Rosser: I understand that the Minister confirmed, as stated in the letter that she sent to me, that the guidance will reflect the Government's expectations and included in those expectations are that the guidance will fully reflect the issues covered by our Amendments 12 and 14 on Report and now repeated in Amendment 12, which we are discussing, at Third Reading. If the Minister will confirm that that is the correct interpretation, I would be very grateful.

Baroness Williams of Trafford: I did just say, but perhaps not very clearly, that it will be both in line with the Government's expectations and with the points made in the noble Lord's Amendments 12 and 14—now Amendment 12. I am happy to reissue that reassurance.

While I am on my feet I wonder whether the noble Lord will indulge me because there is one aspect in the points made by the noble Baroness, Lady Hamwee, on reasonableness that I did not address. PCCs would be expected to act reasonably when determining how to consult locally on their proposal and we would expect them to have regard to relevant case law and to practise the guidance issued by the Association of Policing and Crime Chief Executives. If there is a view that the PCC has acted unreasonably when determining what appropriate local arrangements should be, there would be an option to challenge the decision via the local consultation process or ultimately through legal challenge.

Lord Rosser: I thank the Minister for repeating that reassurance. We have taken this matter as far as we can, and in light of her reply, I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Schedule 9: Independent Office for Police Conduct

Amendment 13

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

13: Schedule 9, page 341, line 42, at end insert—

"( ) In paragraph 28ZA (recommendations by the Commission or a local policing body)(as inserted by this Act), in sub-paragraph (3)(b), after "submission" insert "or completion"."

Amendment 13 agreed.

Amendment 14

Moved by ***Lord Rosser***

14: In the Title, line 18, after "areas;" insert "to make provision about financial support for families at inquests in which a police force is an interested person;"

Lord Rosser: The House agreed to Amendment 157 on Report on the parity of funding at inquests, which does not appear to be covered by the existing Long Title. Accordingly, this amendment is to cover Amendment 157, and comes within the Third Reading principal purposes as tidying up the Bill. I trust the Government will feel able to accept the amendment in the light of the decision of this House on Amendment 157 on Report.

My name is also attached to Amendment 16 in this group. The noble Baroness, Lady Brinton, cannot be in the House today, but the House agreed to Amendments 188 to 193 on Report on support for victims and victims' rights, which do not appear to be covered by the existing Long Title. Once again, this amendment to the Long Title is to cover Amendments 188 to 193 and comes within the Third Reading principal purposes as tidying up the Bill. I trust that the Government will feel able to accept the amendment in the light of the House's decision on those amendments on Report. I beg to move.

Baroness Royall of Blaisdon (Lab): My Lords, Amendment 15 is a tidying amendment to the Long Title and consequential to stalking offences. When I moved the amendment that was adopted by this House last week, I regret that I was not aware that it was encompassed by the Long Title, so I apologise for any inconvenience caused. I take this opportunity to say that I very much hope that the Prime Minister will look at this amendment. She has been terrific on violence against women and girls and, if she had a look at it personally, she might agree to accept it.

Baroness Chisholm of Owlpen: My Lords, as these amendments are purely consequential on various non-government amendments added to the Bill on Report, the Government will not oppose them. We are reflecting on the debates on the amendments put forward on Report by the noble Lord, Lord Rosser, and the noble Baronesses, Lady Royall and Lady Brinton, and we will set out our position when those amendments are considered by the House of Commons on 10 January.

Amendment 14 agreed.

Amendment 15

Moved by ***Baroness Royall of Blaisdon***

15: In the Title, line 27, after "marriage;" insert "to increase the maximum sentences for stalking offences;"

Amendment 15 agreed.

Amendment 16

Moved by ***Lord Rosser***

16: In the Title, line 29, after "detention;" insert "to make provision about victims' rights;"

Amendment 16 agreed.

Motion

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

That the Bill do now pass.

Baroness Williams of Trafford: In moving that the Bill do now pass, I shall not detain the House for long. I have felt the Bill to be a very constructive process, and in particular I thank the noble Lords, Lord Rosser, Lord Kennedy and Lord Paddick, and the noble Baroness, Lady Hamwee, as well as the genius of the noble Lord, Lord Pannick. If I ever need representation, I know where to go, as long as I have a lot of money! I particularly thank the officials, because they are not just from the Home Office; there are officials on the Bill from the Department for Transport, the Department for Culture, Media and Sport and the Ministries of Justice and Defence and the Department of Health. Last but not least, I thank my noble friend Lady Chisholm, without whom I could not have got through the Bill in such a cheerful manner. She has kept me upright sometimes late into the night and has worked so seamlessly with me. It has been an absolute joy. I wish her well. I know that she is not retiring—she is just taking life a bit more sensibly—but I shall desperately miss her by my side in the next Bill that I do.

Lord Rosser: I shall be very brief, but I take this opportunity to thank the Minister and the noble Baroness, Lady Chisholm of Owlpen, for the courteous and open way in which they have listened to and sought to address, within government policy constraints, the issues raised during the passage of the Bill. I seem to have received a deluge of letters, for which I am genuinely very grateful, but it rather tests the statement that somebody, somewhere is waiting for a letter—that may no longer be the case in this instance. Actually, the number of letters that we have received in the light of the debates that have taken place is a reflection that the issues have been raised, considered and responded to, and I am very grateful for that. I thank the members of the Bill team for their help. I also thank all my noble friends, especially my noble friend Lord Kennedy of Southwark, and other Members of this House who have contributed to the debates. We too wish the noble Baroness, Lady Chisholm of Owlpen, a very successful time, presumably on the Back Benches, from where I am sure she will continue to make her views known.

Lord Paddick (LD): My Lords, I too thank the noble Baronesses—the Ministers—for the way in which they have conducted proceedings on the Bill, and the members of the Bill team for the help and co-operation that we have received from them. My next offer of thanks is rather controversial and probably not in accordance with protocol but I also thank the noble Lords, Lord Rosser and Lord Kennedy, for the way in which we have discussed matters, which has helped the Bill's passage

Bill passed and returned to the Commons with amendments.

Pension Schemes Bill [HL]

Report

3.45 pm

Clause 4: Application for authorisation

Amendment 1

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

1: Clause 4, page 3, line 17, at end insert—

"( ) the scheme's member engagement strategy."

Lord McKenzie of Luton (Lab): My Lords, this revisits an amendment debated in Committee and requires the scheme's member-engagement strategy to be one of the pieces of information that must be submitted to the Pensions Regulator as part of the application for authorisation. As such, it would then sit alongside the scheme and the scheme funder's latest accounts—incidentally, that assumes there are some. In a start-up situation there may not be. Perhaps the Minister will comment on that—the business plan and the continuity strategy. The latter, of course, addresses how the interests of members are to be protected if a triggering event occurs.

As was argued in Committee, understanding members' views and needs is essential to designing investment strategies and to the assessment of value for members. Such engagement ought to be an essential component of designing a pension scheme and an integral part of its creation and continuance.

The DC guide sets out that good member communications provided at the right time and in the right format are vital if members are to engage and make decisions that lead to good outcomes for them in retirement. As the code reminds us, there are a number of ways in which the views and needs of members can be determined. It recommends choosing methods that are appropriate and proportionate depending on the size of the scheme and available resources. Included in

[LORD MCKENZIE OF LUTON]
the techniques which might be employed are member surveys, running workshops, holding member AGMs—although we left that degree of flexibility out of this amendment—focus groups and forums, and regular member panels.

In Committee, my noble friend Lord Monks referred to the challenges of encouraging the member voice to be at the top of the agenda. He was speaking of his experience of a master trust with some 1 million members and 20,000 employers—a different proposition from engaging with perhaps just a few thousand members and a handful of employers. As the noble Lord, Lord Stoneham, has reminded us, we are dealing with schemes where the risk is with the members—the employees—which therefore necessitates their effective engagement.

On Second Reading, and repeated in Committee, the noble Lord, Lord Young—the Minister—expressed his support for the principle of member engagement. At col. 1758 of *Hansard* of 21 November, he expressed "a lot of sympathy" with the rationale behind the amendment then tabled. We hope that, on reflection, he might be moved a little further and is now able to accept it. The thrust of the noble Lord's reason for rejecting the proposition appeared to be that there are comprehensive statutory requirements covering communications with members as well as guidance from the regulator and the Bill is not about stipulating how trustees should run an excellent scheme, and that they should have discretion about how they go about member engagement, provided, that is, that communications requirements which already apply are met.

This amendment does not seek to impose any particular approach to engagement on trustees, but it would mean that they would have the opportunity to lay out for the regulator how it is proposed to go about the task, and to demonstrate an understanding of the requirements and how in fact they are to be met in the particular circumstances of each master trust. It would be wrong to see engagement and communication as just a routine matter, especially given the scale of some of the existing master trust operations and given developing technologies. It seems a little odd that the regulator is required under the Bill to assess whether a range of persons are fit and proper; to take a view on whether any particular master trust scheme is financially sustainable and receive a business plan for this purpose; to decide on whether the systems and processes to be used are sufficient to be run effectively; and to determine whether a scheme has an adequate continuity strategy to address the interests of members in the event of a triggering event. However, it can look aside from whether a scheme has an effective member engagement strategy, as it can assume that statutory requirements and regulator guidance will be followed. Frankly, this seems a bit thin.

To accept this amendment would be a very clear demonstration to the sector of the importance placed upon member engagement. At the end of the day, the members are the very people the schemes are supposed to support. What is the downside in accepting this amendment? I beg to move.

Lord Kirkwood of Kirkhope (LD): My Lords, I strongly support the case made by the noble Lord, Lord McKenzie. In my experience, in a defined benefit situation the trustee is rightly prescriptive with regard to the steps that need to be taken to satisfy a reasonable test of an engagement and communication strategy. It is blindingly obvious that it is different with master trusts, because they deal with a number of employers. Some of them might be very different in the work they do and the way they do it, so the extra link in the chain justifies this. No sensible person wants to litter primary legislation with a lot of detail. However, at the very least, the master trust needs to be constrained in law by satisfying itself in some way that it is taking steps, not just to ensure that the employers within the scheme are acting properly but so that the members of those individual schemes get the benefit of a flow of information and data which is appropriate to support the important provision of their pensions in the future. The case is well made. As I say, I am not in favour of adding things for the sake of it, but the cause is just. If, as the noble Lord, Lord McKenzie, suggests, it is kept skeletal, as long as there is some duty in the primary legislation, the Committee would be much happier to consider the passage of this legislation.

Lord Young of Cookham (Con): My Lords, I begin by responding to the point that the noble Lord, Lord McKenzie, made in his introduction about whether, if one was dealing with a start-up, it would have to provide accounts. Of course, it does not, because it cannot, so that bit of Clause 4(2) would not apply.

A range of amendments relating to member engagement were put forward for consideration in Committee, and during that debate and at Second Reading I made it clear that I had sympathy with the principle behind them, as I have with the case that has just been made. Member engagement is important, and members should be encouraged to develop a strong sense of ownership of their pension saving. As the noble Lord, Lord Monks, noted when we last debated this issue, the money that the scheme is managing belongs to them. I also agree that it is important that schemes should keep their members well informed, especially—again, as the noble Lord, Lord McKenzie, noted in Committee—as a member approaches retirement.

That earlier debate focused largely on member communications. Communications are not quite the same as engagement, which is a somewhat broader notion including the idea of a two-way exchange. Effective communications certainly contribute to good levels of engagement but they are not the only factor that determines whether a member develops a sense of ownership of their savings. Noble Lords may also have drawn this distinction, which is why the amendment requires that broader "engagement" strategy. In practice, however, I believe that that strategy would inevitably contain significant detail on communications from a master trust, which is why I would like briefly to revisit some of the arguments on communications which I set out in Committee.

The purpose of this part of the Bill is to introduce robust minimum requirements which ensure that the interests of master trust scheme members are protected

from the risks that arise in these types of schemes; it is not a Bill that seeks to prescribe every facet of running an excellent scheme. Some of those aspects, including how required outcomes may best be achieved in relation to an individual scheme, are matters for the trustees. That is why the documents listed in Clause 4 relate to the key risks and documents directly required under the authorisation criteria, rather than to wider documentation that the scheme may have.

I also noted that there is already a series of legal requirements setting out the minimum standards for communications in occupational pension schemes, which the noble Lord, Lord Kirkwood, may have referred to. It is worth briefly recapping those requirements. Trustees must provide members with basic information about the pension scheme within two months of their joining, and they are required to update them if this information changes. They must provide most members with a member-specific projected pension and an annual benefits statement. They must also provide a wide range of information upon request, including the annual report, the scheme rules, information about the investment principles and information about benefits and transfer values.

I re-emphasise that those are only minimum standards. The Pensions Regulator publishes codes of practice and detailed guidance for trustees to help them run their scheme according to good practice. This includes guidance on member communications. Our view remains that, provided the statutory requirements are met, it should be for trustees to decide how best to manage member communications. This is one area where a good scheme has an opportunity to distinguish itself. Once the regime commences, our assurance regarding the calibre of trustees of master trust schemes will be further enhanced because they will all have passed the new fit and proper persons requirement.

I also take this opportunity to respond to a specific point that was raised in Committee. The noble Lord, Lord McKenzie, argued:

"The Pensions Regulator should have the opportunity to review the systems and processes related to communications just as much as the features and functionality of the proposed IT system".—[*Official Report*, 21/11/16; col. 1754.]

I thank the noble Lord for that contribution, which I have considered further. Although I cannot go as far as he would like me to, I hope that I can go a little further than I did in Committee. I can confirm that the Bill as drafted allows the regulator to take into account the systems and processes relating to communications and engagement when assessing the adequacy of a scheme's systems and processes more broadly. I can also confirm that the Government would intend—subject, of course, to consultation—to use the regulations under Clause 11 to ensure that the regulator specifically considers a scheme's systems and processes in relation to these important communication matters when deciding whether the scheme is run effectively.

There is of course the wider point of the engagement of individuals with workplace pension savings, which we take seriously. As part of the review of automatic enrolment that we announced on 12 December, the Government specifically committed to consider member engagement. In a Written Statement, the Minster for Pensions confirmed that the review would include,

"how engagement with individuals can be improved so that savers have a stronger sense of personal ownership and are better enabled to maximise savings".—[*Official Report*, Commons, 12/12/16; col. 38WS.]

This review will be supported by an external advisory board, which will include pension provider representation, and we will ensure that we engage closely with the industry as part of that review.

4 pm

As to the timing of that review, in the early part of 2017 we will be engaging with stakeholders from across industry on the issues set out in the scope of the automatic enrolment review. Towards the end of 2017 we will publish a report setting out policy recommendations. We will also take into account these findings when considering the regulations under Clause 11, to which I referred a moment ago.

To reiterate my earlier comment, I agree that member engagement is important. I understand the good intentions and reasoning behind the amendment. However, this part of the Bill is about addressing key risks in master trust schemes rather than prescribing every aspect of good practice. Therefore, while sympathising with the case that has been made, I do not believe it demonstrates that there is a key risk to address in the area of member engagement.

Having said that, and given the assurances about the scope of the automatic enrolment review and the intention to use regulations under Clause 11 to assess the adequacy of the scheme's systems and processes related to member communications and engagement, I hope noble Lords will feel reassured that the Government understand the importance of this matter. Against that background, I hope the noble Lord will withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am extremely grateful to the Minister for that response. It ended up a lot more positive than when it started and where it looked as though it was heading originally.

The noble Lord reiterated what he said at an earlier point in our deliberations about statutory guidance being met. My question was going to be: "How does the regulator know that that guidance is being met"? I think the answer is, from the processes under Clause 11 and what he said about systems and processes requirements. I am grateful for that.

I am grateful to the noble Lord, Lord Kirkwood, for his support. I look forward to further deliberations on the auto-enrolment consultation, which we will come to, presumably, in the new year. Having said that and noting what is just ahead, at this stage I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Clause 7: Fit and proper persons requirement

Amendment 2

Moved by ***Lord Freud***

2: Clause 7, page 5, line 29, at end insert—

"( ) The first regulations that are made under subsection (4) are subject to affirmative resolution procedure."

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, these amendments put the noble Lord, Lord McKenzie, not just ahead but well ahead—because he and other noble Lords expressed concern in Committee about the Bill's approach to regulation. With many regulations subject to negative resolution, they felt that they would not be subject to adequate scrutiny. Noble Lords will remember that I responded that I would reflect on that point, and the amendments before us now are a result of that reflection.

We accept that the first regulations made under several of the powers in the Bill could be made under the affirmative resolution procedure to allow for scrutiny via parliamentary debate. After the first set of regulations introducing the authorisation regime has been brought into force, subsequent amendments to those regulations are likely to be relatively minor and, as a result, we do not think that affirmative resolution at that stage would be appropriate. Parliament will, of course, have the opportunity under the negative resolution procedure to require a debate on any such regulations if there is concern.

The provisions that will be subject to affirmative resolution as a result of these amendments represent significant aspects of the authorisation regime, including the fit and proper person test, financial sustainability, systems and processes, continuity strategy and significant events.

I owe the noble Lord, Lord Kirkwood, a proper exposition of the process of how we get to these regulations. Currently there is an engagement process with stakeholders to develop the detailed policy. We anticipate that that and an initial consultation to inform the regulations will take place in the autumn of 2017. That will be followed by formal consultation on the draft regulations. Our intention is to lay the regulations over the summer period and commence them during October 2018.

I will now touch briefly on the actual provisions that are covered. Clause 7 relates to the need for individuals involved in the scheme to be fit and proper people. Subsection (4)(a) allows the Secretary of State to make regulations requiring the regulator to take into account certain matters when assessing whether a person is a fit and proper person to act in a particular capacity. Clauses 8 and 9 relate to the financial sustainability of a master trust. Clause 8 requires that the regulator must be satisfied that the business strategy relating to the scheme is sound and that the scheme has sufficient resources to meet certain costs. The power in Clause 8(4) is to enable regulations to set out matters that the regulator must take into account when deciding whether it is satisfied on these matters. Clause 9 relates to the requirement for a scheme strategist to produce a business plan, and the power in Clause 9(2) allows the Secretary of State to set out what information should be included.

Clause 11 makes provision for systems and processes. It includes a regulation-making power to require the Pensions Regulator to take into account specified matters when deciding whether it is satisfied that the systems and processes adopted by schemes are sufficient to ensure that they are run effectively. Clause 12 sets out the requirement for the scheme strategist to prepare the continuity strategy. The powers in subsections (5) and (6) allow the Secretary of State to determine the format in which the level of charges should be set out. Clause 16 puts a duty on specified persons involved in running an authorised master trust scheme to notify the regulator when they become aware that a "significant event" has occurred.

This group of amendments also includes one further amendment which inserts a power to make consequential amendments to other legislation, including primary legislation. I am grateful to the noble Lord, Lord McKenzie, with whom I have discussed this amendment, for allowing me to bring it forward at what I acknowledge is a late stage. It is a standard power that we have in other pensions legislation, and I really must repeat my apologies that it was not in place at the introduction. The power will be narrow in scope. It is limited to amendments that are consequential to allow for necessary technical fixes and will apply only to existing legislation and legislation passed in this Session.

While we have made every effort to identify and make the necessary consequential amendments in the Bill, pensions legislation, as I suspect noble Lords will acknowledge, is very complex and technical. Similar powers were included in the Pension Schemes Act 2015 and the Pensions Act 2014. The power is used to ensure that the legislation works as intended. For instance, the power in the Pensions Act 2014 was used to ensure that the new state pension was taken into account when setting the automatic enrolment earnings threshold. As was the case in these Acts, this power will also be subject to the affirmative resolution procedure when used to amend primary legislation.

After the concerns expressed in Committee, I hope that these proposed amendments have met noble Lords' concerns that the crucial aspects of the regime will have appropriate scrutiny. I also hope that I have explained why the amendment to Clause 37 is necessary in order to ensure that the legislation works as it should. I will once again repeat my thanks to noble Lords for bearing with me in bringing forward these amendments at this stage, and I trust that I have explained the position properly and given the appropriate level of reassurance. I beg to move.

Lord Kirkwood of Kirkhope: My Lords, obviously I welcome the Minister's amendments, which are a very appropriate response to our discussions in Committee. The compromise that he has struck is useful—and not just in these circumstances. It is actually not a bad idea for legislation to start adopting some of these things because it might avoid some of the tensions we have seen in the past in social security legislation in terms of trying to get access to the secondary legislation. Taking the first regulations under the affirmative procedure is an excellent way out of the problem we saw in Committee.

The timetable that the Minister has laid out is very reassuring and gives people an idea of what to expect in terms of the consultation and the timeframe available. I understand Amendment 24. I know that such provision has been used previously in pensions legislation, but Ministers at the Dispatch Box will be well advised to note that this clause will be particularly carefully looked at not just by the House committees that scrutinise these matters but by the usual suspects on the Back Benches who crawl over the fine print of

these things. If the use of such procedure is deemed to be inappropriate, the negative procedure is always available to us to make sure that there is no abuse of the powers taken under Amendment 24. Otherwise, the noble Lord, Lord McKenzie, and the rest of us are doing quite well so far. I hope that we can keep up this strike rate for the rest of Report.

Lord McKenzie of Luton: My Lords, I thank the Minister for the introduction of these amendments, which are very welcome. He has been true to his word and we thank him for taking us through the process of dealing with the regulations. One of our criticisms of the Bill was the plethora of regulation-making powers therein contained without the prospect of sight of even drafts of such regulations by the time we had to conclude our deliberations.

It was for this reason that we sought to strengthen the parliamentary process for this secondary legislation by subjecting it to the affirmative regulation procedure. The Government are meeting us part way on this matter by requiring in some key areas that the affirmative procedure apply to the first regulations made under various provisions. As we have heard, the changes apply to fit and proper person requirements, financial sustainability, the business plan, systems and process, continuity strategies and significant events.

We have also had the benefit of briefings with the Minister and the Bill team, which have aided our understanding of the regime and how it is meant to operate in respect of a range of issues including non-money purchase benefits, significant events, tax and pause orders and connected employers. As our continuing amendments should signal, we are not in total accord with the Bill as it stands and consider further change desirable.

As to the Henry VIII clause introduced by Amendment 24, the Minister is right that we discussed it before it was laid and I was grateful for that opportunity to engage. We are not enamoured generally of such provisions, particularly when they emerge at the tail end of our deliberations. As originally explained to us, they will be constrained by being used only to make the implementation of the regulations effective. In the event, they seem to go further than that. I wonder whether the Minister might comment. We recognise also that these types of provision have been used by Governments of all persuasions.

We recognise the complexity of the provisions in the Bill as well as the agility of the sector in adapting to change and sometimes circumventing it. Our own scrutiny of the Bill has caused us to conclude that the primary legislation is not in perfect shape even after being improved by our amendments, but until the detail of the regulations has been consulted on, it is difficult to foresee in every respect ideally what changes might have been appropriate. This is notwithstanding the flexibility that the Government have already taken for themselves; for example, in Clause 39.

For us, the imperative is to see a fit-for-purpose Bill on the statute book as quickly as possible. We will therefore not oppose this amendment.

Lord Freud: My Lords, I thank your Lordships for your understanding. I thank again the whole House and its committees, which made the point forcefully about making all these substantial regulations subject to the negative procedure. This was an occasion where we went back. There was a good suggestion—I am sure it was from the noble Lord, Lord McKenzie—that we should do it the first time via the affirmative procedure. I am with the noble Lord on this in thinking that that is a pretty smart way of doing this kind of legislation, because one can really clog up Parliament with affirmatives. I have to do quite a few of them and really, when one looks at them, it is overkill. This compromise may be something that we can look at becoming more of an institution in future. Let us just see on that.

On the power in Clause 37 and the pointed question put by the noble Lord, Lord McKenzie, about its use, I assure noble Lords that that power is narrow in scope. It will be limited to consequential amendments to allow for necessary technical fixes. It will apply only to existing legislation and legislation passed in this Session. Just to make it absolutely clear, it can be used to amend primary legislation but only in this consequential context to allow necessary amendments to make the Bill work.

I am grateful for the understanding of the House on all these amendments—the last of them in particular. I beg to move.

4.15 pm

Lord McKenzie of Luton: I do not want to prolong this but may I just check one point? The noble Lord said that the Henry VIII provisions would be used only in respect of Acts passed in this same Session of Parliament. The wording sent to me says,

"an Act passed before or in the same session as this Act".

Could the Minister clarify that?

Lord Freud: To make it clear, it incorporates legislation that now exists and the legislation that we will prospectively pass with this Bill.

Amendment 2 agreed.

Amendment 3

Moved by ***Lord Freud***

3: Clause 7, page 5, line 30, leave out "Regulations under this section" and insert "Any subsequent regulations under subsection (4), and regulations under subsections (2) and (3),"

Amendment 3 agreed.

Clause 8: Financial sustainability requirement

Amendments 4 and 5

Moved by ***Lord Freud***

4: Clause 8, page 6, line 14, at end insert—

"( ) The first regulations that are made under this section are subject to affirmative resolution procedure."

5: Clause 8, page 6, line 15, at beginning insert "Any subsequent"

Amendments 4 and 5 agreed.

European Council: December 2016

Statement

4.17 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House I will now repeat a Statement made by my right honourable friend the Prime Minister in another place. The Statement is as follows:

"With permission, Mr Speaker, I would like to make a Statement on last week's European Council. Both the UK and the rest of the EU are preparing for the negotiations that will begin when we trigger Article 50 before the end of March next year but the main focus of this Council was, rightly, on how we can work together to address some of the most pressing challenges that we face. These include responding to the migration crisis, strengthening Europe's security and helping to alleviate the suffering in Syria. As I have said, for as long as the UK is a member of the EU we will continue to play our full part. That is what this Council showed, with the UK making a significant contribution on each of these issues.

First, on migration, from the outset the UK pushed for a comprehensive approach that focuses on the root causes of migration as the best way to reduce the number of people coming to Europe. I called for more action in source and transit countries to disrupt the smuggling networks, to improve local capacity to control borders, and to support sustainable livelihoods both for people living there and for refugees. I also said that we must better distinguish between economic migrants and refugees, swiftly returning those with no right to remain and thereby sending out a deterrence message to others thinking of embarking on perilous journeys.

The Council agreed to action in all these areas, and the UK remains fully committed to playing our part. We have already provided training to the Libyan coast-guard. The Royal Navy is providing practical support in the Mediterranean and Aegean. We will also deploy 40 additional specialist staff to the Greek islands to accelerate the processing of claims, particularly from Iraqi, Afghan and Eritrean nationals, and to help return those who have no right to stay. Ultimately, we need a long-term, sustainable approach. That is the best way to retain the consent of our people to provide support and sanctuary to those most in need.

Turning to security and defence, whether it is deterring Russian aggression, countering terrorism or fighting organised crime, the UK remains firmly committed to the security of our European neighbours. That is true now and it will remain true once we have left the EU. At this Council, we welcomed the commitment from all member states to take greater responsibility for their security, to invest more resources and to develop more capabilities. That is the right approach and, as the Council made clear, it should be done in a way that complements rather than duplicates NATO. A stronger EU and a stronger NATO can be mutually reinforcing, and this should be our aim. We must never lose sight of the fact that NATO will always be the bedrock of our collective defence in Europe, and we must never allow anything to undermine it. We also agreed at the Council to renew tier 3 economic sanctions on Russia for another six months, maintaining the pressure on Russia to implement the Minsk agreements in full.

Turning to the appalling situation in Syria, we have all seen the devastating pictures on our TV screens and heard heartbreaking stories of families struggling to get to safety. At this Council, we heard directly from the Mayor of Eastern Aleppo, a brave and courageous man who has already witnessed his city brought to rubble, his neighbours murdered and children's lives destroyed. He had one simple plea for us: to get those who have survived through years of conflict, torture and fear to safety. Together with our European partners, we must do all we can to help.

The Council was unequivocal in its condemnation of President Assad and his backers, Russia and Iran, who must bear the responsibility for the tragedy in Aleppo. They must now allow the UN to evacuate safely the innocent people of Aleppo—Syrians whom President Assad claims to represent. We have seen some progress in recent days, but a few busloads is not enough when there are thousands more who must be rescued, and we cannot have these buses attacked in the way that we have seen. On Thursday afternoon, my right honourable friend the Foreign Secretary summoned the Russian and Iranian ambassadors to make it clear that we expect them to help. Over the weekend, the UK has been working with our international partners to secure agreement on a UN Security Council resolution that would send in UN officials to monitor the evacuation of civilians and provide unfettered humanitarian access. This has been agreed unanimously this afternoon, and we now need it to be implemented in full.

President Assad may be congratulating his regime forces on their actions in Aleppo, but we are in no doubt that this is no victory: it is a tragedy, and one that we will not forget. Last week's Council reiterated that those responsible must be held to account. Alongside our diplomatic efforts, the UK is going to provide a further £20 million of practical support for those who are most vulnerable. This includes £10 million for trusted humanitarian partners working on the front line in some of the hardest to reach places in Syria, to help them deliver food parcels and medical supplies to those most in need, and an additional £100 million to UNICEF to help it provide life-saving aid supplies for the Syrian refugees now massing at the Jordanian border. As the mayor of Eastern Aleppo has said, it is sadly too late to save all those who have been lost, but it is not too late to save those who remain. That is what we must do now.

Turning to Brexit, I updated the Council on the UK's plans for leaving the European Union. I explained that, two weeks ago, this House voted by a considerable majority—almost six to one—to support the Government by delivering the referendum result and invoking Article 50 before the end of March. The UK's Supreme Court is expected to rule next month on whether the Government require parliamentary legislation in order to do this. I am clear that the Government will respect the verdict of our independent judiciary, but I am equally clear that, whichever way the judgment goes, we will meet the timetable I have set out.

At the Council, I also reaffirmed my commitment to a smooth and orderly exit. In this spirit, I made it clear to the other EU leaders that it remains my objective that we give reassurance early on in the negotiations to EU citizens who live in the UK, and UK citizens living in EU countries, that their right to stay where they have made their homes will be protected by our withdrawal. This is an issue which I would like to agree quickly but that clearly requires the agreement of the rest of the EU.

Finally, I welcomed the subsequent short discussion between the 27 other leaders on their plans for the UK's withdrawal. It is right that the other leaders prepare for the negotiations, just as we are making our own preparations. That is in everyone's best interests.

My aim is to cement the UK as a close partner of the EU once we have left. As I have said before, I want the deal we negotiate to reflect the kind of mature, co-operative relationship that close friends and allies enjoy: a deal that will give our companies the maximum freedom to trade with and operate in the European market, and allow European businesses to do the same here; a deal that will deliver the deepest possible co-operation to ensure our national security and the security of our allies; but a deal that will mean when it comes to decisions about our national interest, such as how we control immigration, we can make these decisions for ourselves—and a deal that will mean our laws are once again made in Britain, not in Brussels. With a calm and measured approach, this Government will honour the will of the British people and secure the right deal that will make a success of Brexit for the UK, for the EU and for the world. I commend this Statement to the House".

4.26 pm

Baroness Smith of Basildon (Lab): My Lords, I am grateful to the noble Baroness, Lady Evans, for repeating the Prime Minister's Statement. It was unusual that, following the Council meeting, there was no press statement or conference from the Prime Minister. However, can I say how much we on this side of the House appreciate those announcements being made to Parliament first, which has not always happened recently?

There were two parts to this European Council meeting. The first, as we heard from the noble Baroness, discussed the current and serious issues that affect all existing members of the EU, and we were part of those discussions. The second part was about our leaving the EU, and did not include us and was much shorter, but it is clear that considerable debate and discussion had taken place prior to the formal agreement of those proposals. I want to come on to that later, but those issues that were discussed during the full Council meeting—Syria, Cyprus, migration, security and defence, as well as economic and social development—have huge implications for the UK and for our role, whether in or out of the European institutions, in the geographical area of Europe. It would be helpful to have some further clarification on the UK's role in those discussions.

The Council discussed recent Commission proposals to increase resilience and reduce risk in the banking and financial sector. This clearly has significant relevance for the UK. What role is the UK playing in these ongoing discussions? At a Council meeting prior to the EU referendum, we signed up to some proposals. Can the noble Baroness confirm whether that commitment remains, prior to our departure? What discussions have been had with the banking and financial sector since then and prior to this Council meeting?

Secondly, one of the areas that convinced me that our departure from the EU would not be in the national interest was policing and security. We had debates in your Lordships' House on the then coalition Government's proposals on opting out—and then opting back in again—on policing and criminal justice measures. I note the comments in the conclusions of the meeting. Do the Government still intend to adopt the proposals on firearms and anti-money laundering, and to implement the new passenger name recognition legislation? During discussions on this issue, was there any reference to the UK's role following Brexit and future security initiatives? The noble Baroness, Lady Evans, will be aware of the concerns raised on this issue by Sir Julian King, our European Commissioner for Security, and Claude Moraes MEP, who chairs the Justice and Home Affairs Committee.

Paragraphs 11 to 13 of the conclusions outline the areas on which the EU needs to reach agreement on security issues early next year, and why co-operation within the EU and with NATO is needed on hybrid threats, maritime issues, cybersecurity, strategic communications and defence matters. In signing up to those conclusions, did the Prime Minister or her officials make any reference to how those commitments might be affected by Brexit, or has this not yet been considered?

As we watch the horrors of Aleppo increase daily, we all have to consider how much more those civilians can endure. It must feel to the thousands trying to flee that, having already lost their homes, their possessions and their loved ones, they are now losing hope. They are perhaps also losing faith that anyone really cares. When the Mayor of Aleppo spoke to the Council, he did so in desperate need for more help and more support. The EU is to be praised for its humanitarian support and for how it has sought to co-ordinate it, but the world has to do more. The UN decision and actions today are a welcome step forward, and I hope they lead to many more lives being saved and many more people being rescued, but what is important, as the Statement says, is implementation, not just resolutions passed or words spoken. Will the noble Baroness tell us what the Government will do to ensure implementation, and what is in place to monitor compliance, because we cannot stand more abuse of people in Aleppo? Our hearts go out to all of them.

Paragraph 27 of the Council's conclusions states:

"The EU is considering all available options",

with regard to Aleppo. For many in Syria and in Aleppo there are few options left. I welcome the statement in the conclusions about bringing those guilty of war crimes to justice. The EU is right to support political reconstruction, but only once a credible political transition is under way. Did the discussions focus on how to bring additional pressure to achieve this?

Finally, the last part of the meeting was just the 27 other countries discussing our exit from the EU. This was very specific in terms of the process of

[Baroness Smith of Basildon]
negotiations and in the comments by the President of the European Council, Donald Tusk, after the meeting. It was also very specific on the principle on which the negotiations will be based. The Minister repeated the Prime Minister's Statement:

"I updated the Council on the UK's plans for leaving the European Union".

I think we would all like to be updated on the Government's plans for leaving the EU. I appreciate that the Government have not yet been specific—or have been very unspecific—but, with commitment to invoke Article 50 by the end of March, she will understand that if we are to get the best deal and arrangements for the UK, there is some anxiety about when the Government are going to publish further information. Indeed, we could not get exact information from the noble Baroness, Lady Goldie, about when that information is going to be available. The noble Baroness tried her best to be helpful, but it is difficult in these circumstances.

This becomes even more important when there appears to be confusion at the heart of government about whether we can be half in, half out of the customs union, about how long negotiations will take and about whether a transitional period for negotiation or implementation will be needed. The noble Lord, Lord Lawson, huffs and puffs over there and shakes his head. However, questioning how this will be done is absolutely essential for the Government to get it right. It really cannot be the position that, every time somebody questions how it is going to be done or wants more details, there is some kind of accusation that we are not acting in the national interest. We are absolutely acting in the national interest by trying to get more information to look at. The noble Lord shakes his head. I wonder why those who were the most enthusiastic about Brexit loathe any questions about it.

The noble Baroness, Lady Evans, will understand that this House stands ready to assist and to be helpful. She will have already seen the very helpful, excellent reports from our EU Select Committees. They are identifying issues that need to be addressed to make sure that we have effective and more detailed solutions in the national interest. Can she give an assurance to your Lordships' House that, despite whatever legislative responsibilities we may have, full and adequate time will be provided for such discussions and debates? As a scrutiny Chamber, we want to play a responsible and helpful role in ensuring the best arrangements for the UK.

Lord Newby (LD): My Lords, in the spirit of Christmas, I do not intend to dwell on the Brexit-related issues raised in this Statement. It would be wholly against those core British public service values of tolerance and respect for others to inquire at this festive season about the many and various splits in the Cabinet on all the relevant Brexit issues.

The overarching question which strikes me from a perusal of the agenda of this Council relates to the importance of the subject matter. The agenda included migration, security, economic and social development in respect of young people, Cyprus, Ukraine and Syria. These are some of the biggest issues facing the continent in our time, and it is vital that they are considered—as happened—by Europe as a whole in the Council. If Britain leaves the EU, we will not be at those Council meeting discussions. Have the Government given any thought as to how our vital national interest in key foreign policy issues such as this will be addressed if we are outside the EU? How will the British voice be heard when the rest of Europe considers these huge issues?

Of the issues discussed, arguably the two most important, in the short term at least, were migration and Syria. On migration, the Council statement said:

"Member States should further intensify their efforts to accelerate relocation, in particular for unaccompanied minors, and existing resettlement schemes".

We welcome the Statement by the Government following this up to the effect that,

"we will also deploy 40 additional specialist staff to the Greek islands to accelerate the processing of claims, particularly from Iraqi, Afghan and Eritrean nationals, and to help return those who have no right to stay".

It says a lot about the Prime Minister that she concentrates on those we are rejecting, not those we are accepting, and that she says nothing about what is happening in terms of the Government's commitment to accept unaccompanied minors and others from the region. Could the noble Baroness the Leader update us on the position in respect of unaccompanied minors? What is being done following the dispersal of the Calais camps to identify such people in camps elsewhere in France which hold children who we might accept and to bring them to the UK under either the Dublin or Dubs criteria? What are we doing in Greece to identify unaccompanied minors who equally might expect to come to the UK?

The Government have justified their unwillingness to accept a single adult refugee from mainland Europe on the grounds that they would accept 20,000 Syrian refugees directly from the region over the course of this Parliament. Could the noble Baroness the Leader tell us how many have currently been accepted? The last time the Minister gave an answer at the Dispatch Box, we were accepting people at about half the rate needed to reach the 20,000 target. Has that rate increased in recent weeks, and if not, what plans do the Government have to rectify this shortfall?

On Syria, we welcome the additional £20 million expenditure. Is the Leader able to say how this fits into the overall European response and whether such figures are being matched by our principal European partners? The Prime Minister, in her Statement, referred to the meeting which the Foreign Secretary had with the Russian and Iranian ambassadors last week. What do the Government plan to do to maintain pressure on Russia and Iran to prevent any further indiscriminate violence against civilians as the evacuation of east Aleppo continues? Will the Foreign Secretary make sure that he remains in close touch not just with those two ambassadors but with other ambassadors in the region so that we can have direct and continuing input and pressure to ensure that the position in east Aleppo is resolved as smoothly—if such a word is appropriate—as possible?

Finally, the EU Council reiterated its support for the principle that,

"Those responsible for breaches of international law, some of which may amount to war crimes, must be held accountable".

This can only happen if enough compelling evidence is collected. What steps are the Government taking, including financially, to encourage the collection of such evidence?

Baroness Evans of Bowes Park: My Lords, first, before I answer those questions, I apologise, because I suggested that the Government had committed £100 million to UNICEF. That would be extremely generous of us, but I am afraid it is only £10 million. It is still obviously an important contribution, but I wanted to put that on record and apologise for getting the wrong figure.

As for the questions the noble Baroness and the noble Lord asked me, we remain a full member of the EU with all associated rights and responsibilities. We will continue to honour our commitments while we are a member of the EU, and this extends to the areas of security, law enforcement and criminal justice co-operation. As part of the negotiations, we will of course discuss with the EU and other member states how best to continue that co-operation. It is vital that we do so. That is a key issue that we are concerned about.

On the issue of Syria, which both the noble Lord and the noble Baroness referred to, the Council made clear what needs to happen next in relation to Aleppo: we want to see safe evacuations from the city; full and immediate UN access to provide aid and ensure civilian protection; genuine protection for medical personnel and facilities; and respect from all the actors for international humanitarian law.

There was further discussion at the EU Council that made clear that we are continuing to consider all options available to hold countries accountable for their actions in Syria. We are of course very pleased to see the UN resolution passed today. The noble Lord asked about the other forums in which we will continue to play an international role. We will continue to do so through organisations such as the UN, NATO and others, and indeed we played an important role today in helping to ensure that that resolution was passed. Along with our allies, we will be making very sure that all parties fully comply with that resolution.

The noble Baroness asked about the publication of the Brexit plan. As we have said, we will publish it by the time we trigger Article 50. I also thank the EU committees, as she did, for their work, and I reassure her that we will ensure that ample time is provided to debate those reports in the new year, and that Parliament has a proper opportunity to scrutinise and discuss these important issues.

The noble Lord asked about the Calais camp resettlement. Since 10 October, we have transferred more than 750 unaccompanied minors to the UK, including approximately 200 children who meet the criteria for Section 67 of the Immigration Act. In the coming months, we anticipate that more eligible children will be transferred from Europe, including France, under both the Act and the Dublin regulations. I will have to write to him with more detail on the situation in Greece, as I am afraid I do not have those figures to hand.

4.41 pm

Lord Lawson of Blaby (Con): My Lords, I warmly welcome the Prime Minister's reassertion that we will trigger Article 50 before the end of March. That is of the first importance. I also suggest that the Leader of the Opposition, whom I greatly respect, as she knows, was talking complete nonsense when she spoke about somehow being half in the customs union and half out of it. You are either wholly in or wholly out.

Baroness Smith of Basildon: My Lords, I apologise for interrupting the noble Lord, but I was quoting Liam Fox, who suggested that at the weekend. It was not my suggestion.

Lord Lawson of Blaby: I suspect that that was completely out of order.

I personally would like to see a free trade agreement between the United Kingdom and the European Union with no strings attached. However, I fear that that is unattainable; even if the EU were to agree with it at government level, the European Parliament certainly would not. However, we have nothing to fear about a World Trade Organization fallback. Is my noble friend aware that we do the bulk of our trade with the rest of the world on WTO terms, far more than we do with the EU, and that that amount of trade with the rest of the world is growing faster than our trade with the EU?

Lastly, speaking as a British citizen living in France, I urge the Government to reconsider the matter of the EU citizens legally resident here and to give an unconditional guarantee that they will stay, seize the moral high ground and not try to make them some kind of bargaining counter.

Baroness Evans of Bowes Park: I thank my noble friend for his questions. As the Prime Minister made clear, her objective remains that we indeed give early reassurance in negotiations to EU citizens who live in the UK, and to UK citizens living in EU countries. She has made it very clear that we would like that to be discussed very early on. Our intention is clear, but we will need other European leaders to match our commitment. In terms of the negotiation itself, what we want is a strong Britain working with a strong EU. We want a deal that works both for Britain and for the EU.

Lord Kinnock (Lab): My Lords, I concur, probably for the first time in my life, with the noble Lord, Lord Lawson, and say to the Minister that it would be bad politics and even worse ethics to try to treat citizens of the EU resident in the United Kingdom as bargaining chips in the forthcoming negotiations, and that it would be wise to take what he called the moral high ground by making an early announcement on our intentions as far as they are concerned. In response to her updating of the Council on recent developments in the United Kingdom on Article 50, did the Prime Minister receive any information from the President of France, the Chancellor of Germany and the Prime

[Lord Kinnock]
Minister of the Netherlands about their forthcoming general elections in 2017? Did they advise her that their attention is likely to be focused on domestic issues rather than Brexit and that, consequently, it might be ill advised to notify our intention under Article 50 early in 2017, rather than some months into a year in which other countries of great significance in our negotiations will not be paying much attention?

Baroness Evans of Bowes Park: As I said, the Prime Minister made very clear our wish in relation to EU citizens living in the UK and UK citizens living in the EU, and she raised that specifically during discussions. Obviously, we want to have a mature and co-operative relationship with the EU, and one would assume that that will reflect that. As I mentioned, she also made it clear that we will be triggering Article 50 before the end of March; all EU leaders are well aware of that.

Lord Hylton (CB): My Lords, the Statement contained the usual vague statements about disrupting smugglers and traffickers. Can the noble Baroness the Leader tell us how many such people have been arrested or prosecuted in any of the relevant jurisdictions? Does she agree that Turkey is no longer a safe country to which to return refugees from either Greece or Bulgaria? Why are Turkish forces occupying a considerable part of northern Syria? Tunisia is another important country from the migration angle. Were any decisions taken by the Council to speed up productive investment to increase the number of jobs available there? Will any help be given to Tunisia to assess who is a refugee and who is an economic migrant?

Baroness Evans of Bowes Park: As I mentioned in the Statement, we have been working hard to try to ensure that we disrupt smuggling. That is why we have been fulfilling our obligations as part of Operation Sophia to provide assistance to people in distress, respond to those in need and tackle the callous smugglers. Our Royal Navy and border forces have rescued more than 26,000 migrants.

On the noble Lord's points about Turkey, we share concerns about the direction that Turkey has taken and are actively raising them with the Government. But, as the recent terrible terrorist attack in Istanbul has shown, Turkey is facing serious threats and we want to maintain a robust private dialogue and press Turkey to ensure that it understands the importance of its actions being measured, in line with its international obligations. I will have to write to the noble Lord on his question about Tunisia.

Baroness Ludford (LD): My Lords, the latest buzzword—or perhaps it is a buzz acronym—appears to be Smexit, which stands for the smooth and orderly Brexit which the Statement told us is the Government's aim. Can the Leader of the House tell us whether this aim means that the Government are in fact united in wishing to see a transitional deal?

Baroness Evans of Bowes Park: I can tell the noble Baroness that we are united on delivering the best deal for this country.

Lord Forsyth of Drumlean (Con): Will my noble friend confirm that the Government accept the OBR's figure, which is that each week's delay in leaving the European Union costs British taxpayers more than £250 million? Therefore, will she ignore those who argue that we should delay beginning the Article 50 process?

On the subject of those European citizens who are currently living in Britain, will she reject the appalling tactics by the President of the Commission who seeks to turn it into some bargaining position? As these families gather for Christmas, would it not be right for the Government to make it clear that they will be able to stay here and continue to work and make a contribution to this country? Surely that makes sense. If the Government believe that it is a bargaining position, how on earth will they be able to exercise the rejection of these people from our country, which would carry no support in any corner of this House?

Baroness Evans of Bowes Park: I hope I have made it clear that the Prime Minister has been very clear that her objective remains wanting to give reassurance. We have made our intentions clear and we need other European leaders to match our commitment. My noble friend is absolutely right that we need to provide certainty where we can, which is why the Prime Minister has once again reiterated to our European partners that we will be triggering Article 50 before the end of March.

Lord Campbell of Pittenweem (LD): My Lords, I regret that I am not suffused with the Christmas spirit to the same extent as my noble friend Lord Newby. While I am totally in favour of mature and co-operative relationships, when may we expect one such from the Cabinet? There is much concern about the uncertainty caused by our decision to move towards activating Article 50, so how is that uncertainty to be removed if Members of the Cabinet are consistently at odds with each other as to what the Government's objectives really are?

Baroness Evans of Bowes Park: My Lords, I think I have been very clear. Our objectives are extremely clear: to deliver the best deal for the British people.

Lord King of Bridgwater (Con): Is not the reality that there should be discussion in Cabinet about these very serious issues? What actually matters is that we come to a clear conclusion at the end of it, and I do not expect it to be rushed in five minutes, although I certainly endorse what the noble Lord, Lord Kinnock, said. I saw a German Minister quoted as saying that Germany would not be able to concentrate on these negotiations until after the German election, which is a singularly unhelpful thought.

Baroness Evans of Bowes Park: Perhaps I can further reiterate on the deal that we want. We want to give companies the maximum freedom to trade with and co-operate in the European market and allow European businesses to do the same. We want to deliver the deepest possible co-operation to ensure our national security and the security of our allies. We want to ensure that we are a fully independent sovereign state

and therefore able to make decisions of our own, such as how best to control immigration, and we want to make sure our laws are once again made in Britain. All members of the Cabinet agree on those issues.

Lord Elystan-Morgan (CB): Is the noble Baroness aware that war crimes of the gravest calibre are still being perpetrated against the civilian population in Syria by Russia, Iran and by the Government of Assad? Can she assure the House that Her Majesty's Government have used their good offices to the fullest possible extent to gather evidence while it is still available and fresh so that these people can indeed be brought to justice in adequate time?

Baroness Evans of Bowes Park: The noble Lord is absolutely right. We are deeply concerned by reports that the regime forces and their supporters are carrying out summary executions, including of women and children, and that hundreds of men have disappeared on leaving eastern Aleppo and entering regime-held areas. That is why we are very pleased that the UN Security Council has adopted a resolution today which demands full access across Syria and particularly requests that the UN monitors evacuations from eastern Aleppo. We are doing all we can to ensure that all parties fully comply with that resolution and to make sure that if crimes have been committed the perpetrators are indeed punished.

Viscount Hailsham (Con): My Lords, my noble friend has said that the objective is that our laws should be made in Britain and not in Brussels. That is manifestly correct. However, does she also accept that that means that the final terms, when they are known, should be subject to parliamentary ratification in this House and in the House of Commons, and if Parliament so decides, it would be perfectly democratic to hold another referendum on the known and agreed terms?

Baroness Evans of Bowes Park: We have been very clear that we are implementing the will of 17.4 million people in delivering a referendum and now organising our withdrawal from the EU. We will, of course, comply with all constitutional and legal obligations that apply to the deal we negotiate with the EU.

Pension Schemes Bill [HL]

Report (Continued)

4.54 pm

Amendment 6

Moved by ***Baroness Drake***

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

"Scheme funder of last resort

Notwithstanding the provisions of section 8, the Secretary of State shall make provision for a funder of last resort, to manage any cases where the Master Trust has insufficient resources to meet the cost of complying with subsection (3)(b) of that section."

Baroness Drake (Lab): My Lords, a key purpose of the Bill is to protect the pension pots of ordinary people from being raided in the event of a master trust pension scheme failing. At the moment, the considerable costs, including administrative costs incurred when a failing scheme is wound up and the members transfer to another scheme, are borne by the members themselves through the charges imposed. The intention of the Bill is to prevent that happening in future. It places a capital adequacy requirement on authorised master trusts to have available sufficient resources to meet such costs in the event of failure and provides for members' pots to be transferred to another master trust. The Government argue that, in the event of a scheme failure, the capital adequacy and transfer regime will always work. There is no provision if it does not.

The provisions in this Bill, while welcome, cannot guarantee that there will always be sufficient resources available to a failing scheme to finance the costs of wind-up or that another master trust will always willingly pick up all the pieces and costs. No regulator is infallible. The amendment introduces a requirement on the Secretary of State to make provision for funds of last resort to manage those instances of failure. It does not prescribe what that provision should be—for example, a pension scheme with a last-resort public service obligation, or an obligation on master trusts for tail-risk insurance. But without such a provision, the Government cannot claim as they have that from the day it becomes law the Bill will protect scheme members and their pots from the costs of managing failure.

The reasons for this amendment are several: the Pensions Regulator will need to rely significantly on the judgment of its supervisors to assess whether a master trust meets the requirements for ongoing authorisation, to assess not only against current risks but also future risks and make judgments on when it is necessary to intervene. It will not be regulating a legacy system but the future evolving and expanding system, covering millions of members for a very long time. The Bill places a prohibition on using members' pots to fund a wind-up, but that does not mean that it will all sort itself out. If providers go insolvent, who ultimately will ensure that the wind-up and transfer actually happens? Pots could be left in limbo for many months. Even if the trustees have a legal duty to make such a transfer, they will not be able to pay for advice and administrative services to enable it to happen.

The year 2008 taught us that even the grandest institutions with strong reputations can fail. No regulator can guarantee to remove all risk, and the Pensions Regulator is no exception. However exceptional, a situation could arise whereby a failing master trust will not have sufficient resources on wind-up. Regulator assessment of capital adequacy requirements may simply have been wrong. I hope that that never occurs, but the Government cannot guarantee that it will not. Administrative disarray, failure of controls in the outsourcing to third-party administrators, major computer failure or other failures can hike up costs and cause costly delay in wind-up.

I recently read *The Prudential Regulation Authority's Approach to Banking Supervision* of March 2016, and paragraph 44 says:

"The PRA's supervisory judgements are based on evidence and analysis. It is, however, inherent in a forward-looking system that … there will be occasions when events will show that the supervisor's judgement, in hindsight, was wrong".

[Baroness Drake]

The resolution regime when a trust fails provides for transferring members' pots to another master trust. The Government are relying on the industry to always step up to the plate, but they cannot be certain that it always will. I am sure that there are master trusts now that are already concerned about what that means and will not want to commit to being part of a panel or carousel of providers which will always guarantee to accept the transfer of members. They may consider the unknown future exposure to costs or the liability for the administrative errors or failures of a failed scheme too unpalatable. They may want to cherry pick, leaving a less-profitable section of the members stranded. It is not difficult to imagine the sorts of problems that could occur. The Government cannot assume that the increase in scale achieved from accepting a transfer of members from a failed trust is a sufficient incentive for another provider to always volunteer to rescue.

5 pm

There is a need to address member protection in both existing master trusts which may never apply for authorisation at all, and master trusts which are authorised in future under the new regime due to take effect in 2018. In terms of the former, the new regime is not yet in place. That there will be under-resourced providers already in operation is not adequately addressed. The Government are hoping that another master trust will take over. That hope may not triumph over experience. I think there is a real possibility of an occasion when no one will want a failed master trust. Given that the Government were slow to respond to the emerging risk of weakly regulated master trusts, that would be a public policy failure. Even if other master trusts are willing to offer a rescue, are the Government really asserting that they will always meet the failing scheme's full costs of transfer in the event of a scheme funder insolvency?

When the new authorisation regime takes effect the Government believe that everything will always work, now and into the future—that the regulator's assessment of the capital adequacy under Clause 8 will always be sufficient and that the systems and processes requirements imposed on master trusts under Clause 11 will sufficiently mitigate such risks as administrative disarray and catastrophic IT failure. I hope they are right but exceptionally they could be wrong.

This Bill is urgently needed and I hope its provisions are effective, but there is a gap—there is no provision of last resort to underwrite the Government's claim that members' pots will be protected against the costs of resolving failure. In assuming that the new regime will always work, the Government are making an assertion they are not in a position to make. As the PRA observes,

"there will be occasions when events will show that the supervisor's judgement, in hindsight, was wrong".

Millions of ordinary people do the right thing and save for retirement. They need the unqualified security of knowing that if their master trust fails, their savings will be protected against the costs of sorting out that failure. This amendment seeks to do that. I beg to move.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support this amendment, to which I have put my name, and would like to add to the very eloquent case made by the noble Baroness, Lady Drake; namely that it is very important that we provide protection for members when a master trust fails and give confidence in that regard. In the event of a failure there must be a guarantee backed by the Government. While I accept that we do not expect there to be many failures, there will undoubtedly be some. Therefore, it is necessary to provide protection for that eventuality. This amendment would provide a fall-back position when every other avenue has been exhausted.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, I will address Amendment 6, which was tabled by the noble Lord, Lord McKenzie, and the noble Baronesses, Lady Drake and Lady Bakewell. This is a valuable opportunity for us to discuss member protection, which is clearly at the heart of the Bill and the master trust authorisation regime.

It is not clear why an amendment has been tabled that would require the Secretary of State to make provision for a scheme funder of last resort should a master trust have insufficient resources to meet the cost of complying with the duties arising from a triggering event and to cover the cost of running the scheme on. I simply do not believe this issue requires such a sledge-hammer given all the mitigations against this risk which the Bill introduces, to which I will return briefly later on. The intention behind the amendment is a lingering concern that a failing scheme might not be able to cover the cost of transferring its members' accrued rights out. However, to require the Secretary of State to provide for a scheme funder of last resort would be a costly and disproportionate response. Unfortunately, the amendment does not provide any details of how such a scheme might be achieved at reasonable cost. It would appear to require quite large-scale infrastructural change—the noble Baroness, Lady Drake, mentioned the idea of creating an institution with a PSO. There would need to be transparency in the schemes to which the facility would apply, and we would need to prevent any moral hazard in its application.

I am aware that schemes have failed in the past, and I understand that in some cases these failures have proven expensive to resolve. However, those failures have almost entirely occurred in schemes offering defined benefit pensions. The risks in those types of schemes are very different and the complexity of their structures can make them much more difficult to wind up than a master trust offering defined contribution benefits. If a defined benefit scheme which has been operating for a long time fails, it is much more likely that it will be more time-consuming and expensive for that scheme to close than it would be for a master trust scheme. In the case of master trusts, the noble Lords have inadvertently blown the risk out of proportion.

On the mitigations I mentioned earlier, the Bill contains a raft of measures which address the same risks that the amendment is seeking to address. The financial sustainability requirement is a key risk mitigation as, among other things, it requires schemes to satisfy the Pensions Regulator that they have sufficient financial

resources to comply with their continuity strategy in Clauses 20 to 33 and to run on, following a triggering event. On application for authorisation to operate, a master trust must satisfy the regulator that it has sufficient financial resources, and post-authorisation the regulator has an ongoing duty to monitor the scheme to ensure that it continues to be financially sustainable.

In carrying out its supervisory role the regulator will assess the amount of money that the scheme requires to meet its costs, taking account of its size, the assumptions set out in its business plan, the available assets and the financial strength of the scheme funder. Furthermore, to ensure that any resources are available at the point of need, a regulation-making power enables the Secretary of State to specify requirements that the scheme funder must meet in relation to the assets, capital or liquidity. This power might be used to require certain funds to be put aside and only accessible for specific purposes, and to impose requirements about the liquidity of any capital so that it is easily realisable. Should a scheme fail, Clause 33 prevents the trustees from increasing the charges paid by members during the event-triggering period, so members' pension pots are protected.

To prevent schemes winding up with the records in disarray and without the financial resource to put things right, one of the authorisation criteria requires schemes to satisfy the regulator that they have appropriate administration systems and processes such as record management, IT systems, and resource planning. Schemes will be subject to regular monitoring.

To pick up the specific concern mentioned by the noble Baroness, Lady Drake, about the impact of an IT system failure on a scheme's records, the requirement is for appropriate systems and processes, including back-up systems. The Pensions Regulator has not so far come across a master trust experiencing a computer failure; in practice, failures have been due to schemes not being financially viable.

Finally, it is inappropriate for the Government to intervene in the market by making provision for a scheme funder of last resort. First, such an intervention might undermine member protection by creating a moral hazard that disincentivised schemes from protecting their members. Secondly, if the Secretary of State were required to make provision for a scheme funder of last resort, this could disrupt the normal operation of the market by deterring other master trusts, or scheme funders, from retaining public confidence in master trusts and rescuing a failing scheme. We already know of some master trusts that have been consolidated by being taken over by others. In the extreme, the taxpayer could end up having to pick up the tab for failed schemes. However, the essential argument is that Clause 33 protects members' savings from being used to pay for the costs of winding up or transferring. With that explanation in mind, I urge the noble Baroness to withdraw her amendment.

I now turn to Amendment 23, which may provide some redress for my views on Amendment 6. This amendment introduces a new clause relating to compensation for fraud, and it may provide some mitigation for noble Lords' concerns. In addition to protecting members' interests through the master trust authorisation regime, we are ensuring, through the introduction of this new clause, that members in master trust schemes are protected from the risk of fraud. It will allow regulations to be made that modify the provisions on fraud compensation in the Pensions Act 2004 so that they can be more applicable to master trusts and to any other occupational pension schemes to which all or some of the provisions of Part 1 of the Bill apply.

At present, fraud compensation payments can be made to occupational pension schemes where certain conditions are met. These conditions include that the value of the scheme's assets has been reduced and that there are reasonable grounds for believing that this has been due to dishonesty. Also, all the employers in relation to the scheme must have gone out of business or the businesses must be unlikely to continue as going concerns.

Master trust schemes are occupational pension schemes, and we think it is right that they should qualify for fraud compensation payments and that their members should be entitled to this protection in the same way as members in other occupational pension schemes. However, as master trusts are used, or are intended to be used, by multiple employers who do not need a connection to each other, they would be likely to have difficulty meeting that last condition on the insolvency of all the participating employers. Therefore, our intention is that regulations will remove this employer insolvency requirement for master trusts and add other conditions to make fraud compensation more suitable for these types of schemes. These regulations would, of course, be subject to consultation, which would allow us to engage with stakeholders in developing them.

I hope that the noble Lord, Lord McKenzie, will feel that on balance he has moved somewhat ahead in respect of these amendments.

5.15 pm

Baroness Drake: I thank the Minister for his response and will address some of the arguments he put. The amendment does not introduce a sledge-hammer: it leaves the provision to the Secretary of State. It does not require a large infrastructure to deliver such a provision. It can be as straightforward as requiring master trusts to have tail-end risk insurance. It can use a precedent that is used in many other areas of identifying a provider or operator who carries the public service—

Lord Freud: I should make it clear to the noble Baroness that we looked closely at tail-end risk insurance. It works within the legislation and the regulator can accept it. We have not made it a major issue at this stage because, at the moment, no such insurance is available in the market. That may change, of course.

Baroness Drake: Perhaps I may finish my point. I understand what the Minister has described but is he saying that the Government will consider a provision such as tail-end risk insurance?

Lord Freud: I am saying that the clause is carefully drafted to allow tail-end insurance as part of the capital adequacy when the regulator looks at what is required. We are not in a position to do any more at

[LORD FREUD]
this stage because that particular insurance is not available in the market. It may well become available in the market as people see the requirement.

Baroness Drake: I come back to my point that I am seeking not to tie the Government down to a particular provision or how they choose to interpret it, but to answer the question that no Government or regulator can guarantee that they can remove all risk of regulatory failure. In the Bill at the moment—unless the Minister wishes to contradict me—I can find no provision as to where responsibility would fall in the event of such failure occurring and there is not the funding to deal with the wind-up and the transfer.

I do not accept that it increases the chances of moral hazard. The Bill gives the regulators considerable power to set tough requirements. Indeed, the whole purpose of the regime is to address the moral hazard of introducing a profit motive into a trust-based arrangement. The existing regulation and legislation does not deal with that. However much we iteratively discuss this—I welcome the Minister contradicting me—in the event of a regulatory failure and a trust that does not have the means to finance wind-up, there is nothing in the Bill to show how a member is protected.

Lord Freud: I am grateful to the noble Baroness for inviting me to intervene again. Under the Bill, if there are costs, they will not fall on the members, so who is she trying to protect? As to my point about the sledge-hammer, if we could have found tail-end insurance, which the noble Baroness mentioned, it would have been cheaper. Other ways that I can think of are quite expensive. It is not appropriate to suggest a solution that is not available.

Baroness Drake: The Government are asserting that the costs will not fall on the member because they have put in place a prohibition to say that the costs will not fall on the member. However, if the member is in a master trust of some size which has to go into wind-up, and there are not the resources to deal with that wind-up, there is no answer to the question of who will bear the costs. An answer has to be given, and this amendment is asking the Government to put in place a provision to give effect to that prohibition and say that there will be an alternative provision to ensure that the costs do not fall on the member. I do not believe that the Minister has answered the questions. There are millions of people with potentially billions-worth of assets under the regime, and this is a fundamental question which remains unanswered.

Lord Freud: The noble Baroness has been so generous and I will take the opportunity to go over this because it is slightly back to front from normal. This is not like a defined benefit scheme worth billions of pounds which are at severe risk. This is about the costs of moving the money that is attached to individual people to another master trust. It is a completely different order of risk. I know that she is coloured by what she has seen in the defined benefit world, but this is quite different. It is a much smaller risk. As I have said, in any case the costs do not fall on the members and the mitigation issue is disproportionate.

Baroness Hollis of Heigham (Lab): My Lords, I hope that my noble friend will pursue this point because, unless the Minister can give a categorical assurance, this is the only way to ensure that the Government take the issue seriously and pursue a remedy that is appropriate to the risk that she has outlined.

Baroness Drake: I thank my noble friend for her support. I am not coloured by the defined benefit experience at all because I am quite capable of distinguishing between the two. I am sure that I understand the risk posed in this draft legislation. However, I come back to the point. The Government may wish to assert that the costs of winding-up and transferring could be considerable if the records are in disarray, if no master trust is willing to pick up the pieces, or if other problems occur. The Government can assert as a matter of policy that the costs will not fall on the member, but there is nothing in this Bill to copper-bottom that they will not. I feel that the Minister has not answered that question. I am not proposing a sledge-hammer and I am not tying the Government's hand, but they must introduce a provision which states that if the policy is to prohibit increasing members' costs when a wind-up after a failure occurs, in extremis if there is regulatory failure that provision will come into effect. I am not persuaded by the Minister's reply and on that basis I wish to test the opinion of the House.

5.22 pm

Division on Amendment 6

Contents 209; Not-Contents 204. [The Tellers for the Contents reported 209 votes, the Clerks recorded 208 names.]

Amendment 6 agreed.

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Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arbuthnot of Edrom, L.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Barker of Battle, L.
Bates, L.
Bell, L.
Berridge, B.
Bertin, B.
Best, L.
Bew, L.
Black of Brentwood, L.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowness, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Byford, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chisholm of Owlpen, B.
Collins of Mapesbury, L.
Colville of Culross, V.
Colwyn, L.
Cope of Berkeley, L.
Cormack, L.
Courtown, E. [Teller]
Craig of Radley, L.
Craigavon, V.
Crickhowell, L.
Cumberlege, B.
De Mauley, L.
Deben, L.
Deighton, L.
Denham, L.
Dixon-Smith, L.
Dobbs, L.
Dundee, E.
Dunlop, L.
Eames, L.
Eaton, B.
Eccles, V.
Empey, L.
Erroll, E.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fall, B.
Farmer, L.
Faulks, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Freud, L.
Gadhia, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Garel-Jones, L.
Geddes, L.
Gilbert of Panteg, L.
Gold, L.
Goldie, B.
Grabiner, L.
Grade of Yarmouth, L.
Greenway, L.
Hailsham, V.
Hamilton of Epsom, L.
Hanham, B.
Harding of Winscombe, B.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Higgins, L.
Hill of Oareford, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howe, E.
Howe of Idlicote, B.
Howell of Guildford, L.
Hunt of Wirral, L.
Inglewood, L.
James of Blackheath, L.
Jay of Ewelme, L.
Jenkin of Kennington, B.
Jopling, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkhope of Harrogate, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lansley, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lucas, L.
McColl of Dulwich, L.
MacGregor of Pulham Market, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
Mackay of Clashfern, L.
Mancroft, L.
Manzoor, B.
Mar, C.
Marland, L.
Marlesford, L.
Maude of Horsham, L.
Mawson, L.
Mobarik, B.
Morris of Bolton, B.
Moynihan, L.
Naseby, L.
Neville-Jones, B.
Neville-Rolfe, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.

O'Cathain, B.
O'Neill of Bengarve, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Pannick, L.
Patten, L.
Pearson of Rannoch, L.
Pidding, B.
Polak, L.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Rawlings, B.
Redfern, B.
Ribeiro, L.
Robathan, L.
Rose of Monewden, L.
Ryder of Wensum, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Shackleton of Belgravia, B.
Sheikh, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Hindhead, L.
Spicer, L.
Stowell of Beeston, B.
Stroud, B.
Sugg, B.
Suri, L.
Sutherland of Houndwood, L.
Taylor of Holbeach, L. [Teller]
Trefgarne, L.
Trenchard, V.
True, L.
Tugendhat, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Wakeham, L.
Warsi, B.
Wasserman, L.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Young of Cookham, L.
Younger of Leckie, V.

5.36 pm

Clause 9: Financial sustainability requirement: business plan

Amendments 7 and 8

Moved by ***Lord Freud***

7: Clause 9, page 6, line 33, at end insert—

"( ) The first regulations that are made under this section are subject to affirmative resolution procedure."

8: Clause 9, page 6, line 34, at beginning insert "Any subsequent"

Amendments 7 and 8 agreed.

Clause 10: Scheme funder requirements

Amendment 9

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

9: Clause 10, page 6, line 39, leave out "as a separate legal entity" and insert "and carry out activities in a manner which enables its financial position and the financial arrangements between it and a Master Trust to be transparent to the Regulator"

Lord McKenzie of Luton: My Lords, I will also speak to Amendment 10 in this group. Amendment 9 takes us back to scheme funder requirements, which we debated in Committee.

Our concerns expressed at that time were about the rigid nature of the provisions requiring a scheme funder to be constituted as a separate legal entity and for the activities of such entities to be restricted to the particular master trust. Our concerns remain, and in particular include representations made to us that preventing a single provider supporting more than one master trust could inhibit consolidation and the ability to rescue failing schemes. Further, where the scheme funder is currently part of a wider, well-capitalised legal entity—perhaps an FCA and PRA-authorised insurer—to force a restructuring could weaken and not improve the position of the funder.

Our original amendment was to delete the requirement for the scheme funder to be a separate legal entity and to carry out activities only for the master trust, replacing this with a requirement that the scheme funder should be approved by the Pensions Regulator. The Minister—the noble Lord, Lord Young—rejected this approach, arguing that it would make it more difficult for the regulator to obtain transparency on the financial position of the funder and its financial arrangements with the master trust. Our revised amendment therefore requires that the scheme funder be constituted and carry out its activities in a manner that enables its financial position and the financial arrangements between it and the master trust to be transparent to the regulator. It sits alongside the regulations that will set out the requirements of the scheme funder accounts. It may well be that some will choose the existing formulation of the Bill to do this. Others may have a different approach, especially if they are existing trusts. However, they must satisfy the regulator as to the transparency of the arrangements. Moreover, they must continue to satisfy the regulator on this point.

On 21 November, the Minister in the House of Lords, at *Hansard* col. 1789, rejected the idea that the Bill's existing requirements placed restrictions on shared services or would lead to the disruption of existing business. The requirements are apparently not designed to require the unpicking of any shared service agreements. We suggest that this analysis is suspect. From what the Minister said, it would seem perfectly possible for a scheme funder to receive a charge from a group or associated company for services it has received, presumably with an arm's-length profit uplift, but not for the scheme funder to make a charge for services it has rendered, with or without uplift, because this would be outwith Clause 10(3)(b). If the issue is transparency, what assurances are received by an incoming group charge which cannot be obtained in respect of an outflow?

Shared service agreements do not necessarily arise by all costs originating in one entity that are then allocated across a group. Individual companies might bear costs, all or part of which are contributed to a pool and then reallocated across all or some of the group entities, and there may be a changing pattern from year to year. Incidentally, whereas in the Government's formulation a scheme funder may not charge for services to another company, associated or otherwise, it seems there is nothing to inhibit the flow of dividends upstream. Is this right? What is the position of a scheme funder which provides a guarantee to another entity? Is the provision of a guarantee an "activity" for the purposes of Clause 10(3)(b) or not?

It is important that these group flows are transparent—we accept that. But the assertion that the regulator's task is easy when dealing with inward group flows but more difficult for outward flows from the very entity that is being regulated seems difficult to sustain. The Minister said that he expected costs allocated to master trusts to be transparent to the regulator through the business plan accounts and other related documents. If transparency can be achieved in this manner for inflows, why not outflows from the scheme funder, or indeed for it having more than one business line?

Of course, we accept and support the significance of the scheme funder in these arrangements and the importance of being clear as to its financial strength. However, as outlined already, are not the Government in danger of throwing out the baby with the bath water in circumstances where a scheme is funded by an FCA-regulated entity with the robust capital requirements that this entails? Further, the Government have yet to answer how the clause currently works in circumstances where the master trust provides benefits other than money purchase benefits. If there were any activities carried out for non-money purchase benefits, which seems inevitable, the scheme funder would appear to fall outside the definition of a "separate legal entity". Is this correct?

The Minister is also on record as suggesting that groups of companies are used to restructuring their statutory accounting arrangements to reflect changes in focus. That may be true, but it does not mean that it can inevitably be achieved without costs, especially taxation, if non-group entities are involved.

We look forward to hearing from the noble Lord, Lord Flight, on Amendments 11 and 12, the thrust of which appears to enable a scheme funder to carry on other activities, as well as those for the master trust, although these must be disclosed to the regulator for the purposes of assessing financial sustainability. If they have the effect of allowing the scheme funder to carry on the scheme and other activities, but with the obligation to disclose, we will indeed be making good progress on the issue.

Finally, can the Minister say whether Clause 39 could be used to carve out certain schemes from the requirements of Clause 10? Do the Government have any plans to do this, and what types of schemes might be involved if they do? Although we are on Report, the scheme funder provisions remain troublesome, with many unanswered issues. We urge the Government to take this away for another go at Third Reading. In the meantime, I beg to move.

5.45 pm

Lord Flight (Con): My Lords, Amendments 11 and 12 in my name seek broadly the same objective as that of the noble Lord, Lord McKenzie, and would enable a funder to do other things but subject to the regulator having to approve them. The fundamental issue here for the insurance industry is that the funder being a separate entity does not really work. The Bill will introduce additional cost for master trusts offered by insurers, potentially to the detriment of existing scheme members, as these schemes already operate under stringent FCA and PRA regulation.

As noble Lords will know, a number of insurers offer master trusts to members in addition to group personal pensions and alongside other business lines. Insurers currently manage risks across a number of product lines and they all operate under stringent FCA and PRA regulation. It seems to me that members of master trust schemes used for automatic enrolment should meet high solvency and reporting standards but that the Bill should not introduce additional requirements on master trusts offered by insurers where suitable protections are already in place.

The key concern is the definition of a scheme funder as set out in Clause 10, which specifies that it,

"must be constituted as a separate legal entity",

and must not carry on any other activities. The Government have stated that the purpose of this clause is to better enable the Pensions Regulator to assess the financial sustainability of the scheme by increasing transparency of the assets, liabilities, costs and income of the master trust. I do not really see that Clause 10, by itself, meets the policy intent of providing the transparency to assess the financial sustainability of a master trust, since as a "separate legal entity" it can still transfer risk to other entities.

A key benefit of a master trust being part of a wider and well-capitalised legal entity is that the scheme can, if necessary, draw upon this capital. Members of master trust schemes offered by insurers currently benefit from this additional security. Many of the ABI's members view this as a key selling point to employers who have chosen their master trust schemes. It is fortunate that the Bill will be moving on to the other place because I would ask the Government to continue negotiations with the insurance industry on this point, either with a view to satisfying it that the Government are right or to accepting its views. It is not entirely satisfactory if the key provider industry is not comfortable with this issue. This does not go into territory which I would personally want to put to a vote, but it needs further discussion with the industry.

Lord Young of Cookham (Con): My Lords, I am grateful to the noble Lord, Lord McKenzie, and to my noble friend Lord Flight for tabling amendments which are, in their objectives, all broadly supportive of the Government's position: that there should be transparency about a master trust's financial position, including the financial arrangements between it and the scheme funders and the strength of those funders, in order to support the Pensions Regulator's financial supervision.

Amendments 9, 10 and 11 would all have a similar effect: to remove the requirement that the scheme funder,

"be constituted as a separate legal entity",

that does not carry out any activities other than master trusts. Although they are well-intentioned, these amendments raise problems of their own. Amendments 9 and 10 would have the opposite effect to transparency, because scheme funders would be unclear as to whether the manner in which they carry out their activities and are constituted is sufficiently transparent to the regulator for the purpose of its financial supervision. This is partly because the arrangements between scheme funders and master trusts will vary enormously across schemes. Amendments 9 and 10 would, by removing much of the substance of the scheme funder requirement in Clause 10, make it more difficult for the regulator to assess compliance and make its financial supervision of the scheme more challenging.

Following the exchange in Committee, we have explored this issue further, but the Government and, more importantly, the Pensions Regulator believe that ensuring transparency about the status of the financial arrangements between the master trust funder and the master trust is essential to this new regime and to the

[Lord Young of Cookham]
regulator's assessment of the financial sustainability of the scheme. The requirement to be a separate legal entity achieves this objective. I do not pretend that this is not without cost to some insurance companies—a point that was raised earlier—but the alternative provided by this amendment is not equipping the regulator to make a key decision that could impact on the security of thousands of scheme members.

Amendment 12 may be technically flawed because Clause 8 relates to the financial sustainability of the scheme, not of the scheme funder. It is worth noting that the regulator can assess the financial strength of the scheme funder through its accounts, required under Clause 14, in any event. The Government believe that the most clear and straightforward way to achieve the desired level of financial transparency is through the requirement in Clause 10 for the scheme funder to be set up as a separate legal entity whose only activities relate to the master trust. This will also protect the interests of master trust scheme members. However, this does not prevent scheme funders, such as insurance companies, operating other lines of business through another vehicle.

I was asked whether a scheme funder can support more than one master trust. A scheme funder can support more than one master trust by setting up separate legal entities for each scheme. On the question of whether there is anything in the Bill to inhibit the flow of dividends from the scheme funder outwards, the Bill does not impose any direct restrictions on the flow of dividends from or to a scheme funder, so long as the scheme is financially sustainable. The noble Lord also asked whether the provision of a guarantee by a scheme funder is an activity which the clause prohibits. A scheme funder can provide a guarantee in respect of the master trust to which it is the scheme funder.

It may be that the amendments are intended to address certain underlying concerns: first, about the cost of corporate restructuring to meet the requirement to be a separate legal entity; and secondly, about double regulation, an issue that was raised in Committee. The practical and legal requirements for setting up a business entity should not of themselves be burdensome. It is quick and easy to incorporate a company in the UK, and the Government make a company's ongoing filing requirements as simple as possible to comply with. However, we recognise that, to meet this requirement, some companies offering master trusts among other lines of business would have to undergo corporate restructuring. To address this, we are working with key stakeholders to develop a proportionate approach to regulation that minimises the burden on business without undermining the Pensions Regulator's ability financially to supervise schemes through transparent financial structures and reporting.

Noble Lords may recall from earlier debates that the financial sustainability requirements that master trusts have to meet in order to operate have been developed to address the specific risks faced by the members of master trusts. However, if we identify an overlap between our requirements and those of other regulatory regimes, the Secretary of State has a regulation-making power in Clause 8 that can require the regulator to take those regulatory requirements into account when assessing whether a scheme is financially sustainable. We believe that power to be sufficiently flexible to prescribe, for instance, that if the scheme funder has an enforceable guarantee from a financially sound parent company, such as one that meets the PRA's capital requirements, the regulator must take that into account when assessing whether the scheme has sufficient resources to meet the specified costs. Let me re-emphasise our commitment to proportionate regulation, striking an appropriate balance between member protection and minimising the burdens on business. We are working with key stakeholders to ensure that we understand their concerns.

Noble Lords also expressed related concerns about how the requirement for a separate scheme funder in Clause 10 applies to master trust schemes that offer both money purchase and non-money purchase benefits, a point raised by the noble Lord, Lord McKenzie, a few moments ago. Noble Lords have highlighted the interaction of that requirement with the provision in Clause 1 that the provisions are to be taken to refer to the master trust,

"only to the extent that it provides money purchase benefits".

My noble friend and I have had productive conversations with noble Lords opposite in the past week, although not as productive as they would have liked. I expect those to continue. The team at the DWP is looking at all options that are open to us, but at this stage I regret I cannot commit to a timetable, nor can I commit to returning to the issue before Third Reading. However, noble Lords should be reassured of our very firm intention to take further action during the passage of the Bill.

I hope that the points I have made are sufficient to explain why the Government are of the view that these amendments would not be appropriate, and that the noble Lord will feel sufficiently reassured not to press them.

Lord McKenzie of Luton: My Lords, I am grateful to the noble Lord, Lord Young, for his response to the amendments. I would say to the noble Lord, Lord Flight, that we end up with the same objectives and the same analysis about what we want to achieve, if with a slightly different way of going about it. However, I am disappointed with the response from the noble Lord, Lord Young. I am not sure whether he specifically dealt with the point about whether Clause 39 could be used to carve out some of the schemes in some of the circumstances we have particular concerns about, and, if so, which of those schemes could be the subject of that carve-out. That might be one route to partially addressing some of the problems. I do not know whether the noble Lord wants to come in.

Lord Young of Cookham: I am happy to give the noble Lord the assurance he has just asked for.

Lord McKenzie of Luton: I was not asking for an assurance but for an answer.

Lord Young of Cookham: The regulations in Clause 39 give the flexibility the noble Lord has just asked for.

Lord McKenzie of Luton: I am grateful to the noble Lord, but would be interested in knowing how they might be used and in the Government's intent, because potentially that gives a route to addressing some of the issues we are concerned with. I regret also that the Government are not yet in a position to answer the question about non-money purchase benefits. This has been on the table for a little while and seems to me to be a straightforward tactical issue which has one of two answers: either it can be made to work or it does not work, in which case I suggest there is quite a serious flaw in the structure of these provisions.

We understand that to help the regulator get maximum clarity on transparency, there needs to be a separate vehicle which only provides activities to the master trust, but it seems to me that the Government are not putting into the balance the consequences of going down that route. As the noble Lord himself I think acknowledged, the consequences could include a restructuring of a group, which might have costs. It certainly could include disruption of all the shared services arrangements, and again I do not think we have the answers to why the Government believe it is okay to have shared services charged into a company which is providing activities to the master trust but not in the other direction. It seems to me the same level of transparency could effectively be made available to both.

If there is any comfort in this, it is that there appears to be some ongoing dialogue with the industry. I think we can be comforted by that, but it is a great pity that the Bill leaves us with this provision, which has been seen as a bone of contention for a long time and was flagged up some time ago. Frankly, the issues is completely unresolved. I am tempted to test the opinion of the House, but it is Christmas. We are a long way from achieving clarity on this issue, but in the circumstances I do not think dividing would achieve very much. I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendments 10 to 12 not moved.

Clause 11: Systems and processes requirements

Amendments 13 and 14
Moved by ***Lord Freud***

13: Clause 11, page 7, line 35, at end insert—

"( ) The first regulations that are made under this section are subject to affirmative resolution procedure."

14: Clause 11, page 7, line 36, at beginning insert "Any subsequent"

Amendments 13 and 14 agreed.

Clause 12: Continuity strategy requirement

Amendments 15 and 16
Moved by ***Lord Freud***

15: Clause 12, page 8, line 19, at end insert—

"( ) The first regulations that are made under this section are subject to affirmative resolution procedure."

16: Clause 12, page 8, line 20, at beginning insert "Any subsequent"

Amendments 15 and 16 agreed.

Clause 16: Duty to notify Regulator of significant events

Amendments 17 and 18
Moved by ***Lord Freud***

17: Clause 16, page 10, line 8, at end insert—

"( ) The first regulations that are made under subsection (3) are subject to affirmative resolution procedure."

18: Clause 16, page 10, line 9, leave out "Regulations under this section" and insert "Any subsequent regulations under subsection (3), and regulations under subsection (2),"

Amendments 17 and 18 agreed.

6 pm

Clause 23: Continuity options

Amendment 19
Moved by ***Lord McKenzie of Luton***

19: Clause 23, page 16, line 29, at end insert "or for a new scheme funder to be put in place in relation to the Master Trust in accordance with regulations under section 24."

Lord McKenzie of Luton: My Lords, I shall also speak to our other amendments in this group, Amendments 20, 21 and 22. They take us back to another issue that we discussed in Committee: the substitution of a new scheme funder where a triggering event has occurred. Depending on the circumstances, one of two continuity options has to be pursued. Continuity option 1 requires the transfer out and winding up of the scheme, while option 2 involves an attempt to resolve the triggering event. At present, continuity option 1 is mandatory on the trustees where certain of the more significant triggering events are involved. These are where the Pensions Regulator issues a warning or determination notice concerning decisions to withdraw a scheme's authorisation, or where a notification that the scheme is not authorised has been given.

In Committee we pursued an argument to the effect that the Pensions Regulator should be enabled to cause the matter to be resolved by the replacement of the scheme funder. We argued that transferring the responsibility for a master trust to a new scheme funder could provide a quick answer to a collapsing master trust, costing less and helping members because it keeps the scheme intact and avoids unnecessary investment transition costs and expenses for Members. This has been acknowledged by the Government. However, the Minister rejected our amendments, particularly on the grounds that it was the role of trustees to run and manage schemes. They have the fiduciary duty to act in the best interests of members and should not be second-guessed by the regulator in this regard.

The Minister asserted that the outcome of substituting a new scheme funder was available to the trustees under continuity option 2, subject to the full requirements of adoption including the preparation of a comprehensive implementation strategy. We accept that as far as it goes, and agree that the substitution of a new scheme funder can be a way of resolving the triggering event. However, it does not provide a route where option 1 is mandatory on the trustees. That is why our Amendment 19

[Lord McKenzie of Luton]
would allow for a new scheme funder to be put in place under option 1, in accordance with regulations to be added to the long list included in Clause 24(4) under our Amendment 21. Amendment 22 would require the submission of an implementation strategy.

We have heard from the Government no good reason why the substitute scheme funder route should not be available for all triggering events, although the Government may argue that for triggering events one to three, matters are likely to be more serious than for a change in a scheme funder to be the way forward. Will the Minister confirm that he would routinely expect the regulation around option 2, including the substitute funder, to be considered before the regulator formally moves to withdraw authorisation?

Amendment 20 is a rerun of a debate in Committee, and on rereading *Hansard* we consider the matter sufficiently covered. I beg to move.

Lord Freud: I shall take the opportunity to go through the matter of transfers because there has been a lot of discussion of it and this at the heart of it. I will pick up what we did in Committee, where the amendment from my noble friend Lord Flight referred to automatic transfers. I confirm that we will look to revisit automatic transfers once the market has absorbed the recent reforms.

The next issue was that we announced in 2016 that we would ensure that the pensions industry launched the pensions dashboard, which would allow people to see in one place their retirement savings from across the industry, which they could consolidate, and the Government would support the industry in doing that.

We then moved on to touch on transfers between default funds—for example, where a trustee may wish to move members out of an old default fund into a new one because they think the old fund is not offering value for money. There, we were concerned whether members might get left behind. This would be for the trustees to consider and act on under their fiduciary duty, not for legislation.

Then we had issues about bulk transfers in place at the moment, which require an employer connection and an actuarial certificate. There, I confirm again that we would have a call for evidence to consider the potential changes to DC to DC transfers. The last point that we visited was about the transfer from a master trust which is failing. Again, I confirm that where a scheme is acting under option 1 following a triggering event, the Bill applies, not the current provision under legislation relating to bulk transfer without member consent.

I think that sets a useful context for consideration of the amendments. Amendment 20 makes two additions to what will be covered by the regulations that must be made under Clause 24. Clause 24 sets out the detail of continuity option 1 and the requirements. In this situation, the clause requires that the trustee must identify one or more master trusts to which members' rights must be transferred. The regulation-making power set out a number of matters connected with how this process should work. The intent is for members to be able to continue to save with as little disruption as possible and to protect the rights that they have accrued.

The regulator is aware of the need for schemes to be available that have been authorised into which members can be transferred. Experience to date has shown that there are good-quality schemes in the market. From our discussions with both master trusts and pension industry bodies, we are aware that they are keen to demonstrate the reliability of master trusts and for members to have confidence in them as a vehicle for pension saving, and there are therefore likely to be some available to take in transfers. For many master trusts, making themselves available to take a transfer would offer the opportunity to take in a number of members that they have not had to actively source—clearly, they get the benefits of scale.

Employers and members also have reassurance provided by NEST. Although a master trust could not itself do a direct bulk transfer to NEST—as the employer must first establish a connection with NEST—an employer could chose to sign up to NEST and move its workers across. NEST is required to admit any employer and any worker enrolled by the employer to meet its automatic enrolment duties.

The master trust industry has expressed an interest in developing its own panel of providers to assist with addressing situations where a master trust fails. Although we cannot guarantee that there will be a large number of master trusts looking to take on members of any failed master trust, we are confident that there is adequate provision within the market overall.

The second part of Amendment 20 would require that regulations made under Clause 24 set out what would happen to any non-money purchase benefits where a master trust which has mixed benefits was going to transfer the money-purchase benefits out of the scheme and cease to operate in respect of those benefits. We do not believe that that is necessary. We have been careful to design the master trust authorisation to target the risks to money-purchase benefits in these structures.

Therefore, if authorisation is withdrawn from a master trust which offers mixed benefits, it will be required to stop operating in relation to the money-purchase benefits only. It may still continue to operate in respect of the non-money purchase benefits if it is compliant with the relevant requirements of the non-money purchase benefit regime.

Where the scheme as a whole is winding up, existing provisions governing how non-money purchase benefits are to be discharged will apply to those benefits. That is clearly an issue of avoiding duplication.

On the question asked by the noble Lord, Lord McKenzie, the regulator can decide to encourage the scheme to substitute the scheme funder where this is appropriate, and before it moves to withdraw authorisation. The flexibility is there. Adding on the requirement that one option must be looked at before the other would probably reduce flexibility.

Amendments 19, 21 and 22 seek to make provision that continuity option 1 also allows for the substitution of a new scheme funder. Clause 23 sets out the two

continuity options that must be pursued by trustees when a master trust has a triggering event. Unless authorisation has been withdrawn or refused, trustees will have a choice as to which continuity option they pursue. Clause 24 describes continuity option 1. Continuity option 2, under Clause 25, is when a master trust resolves its triggering event itself. The legislation does not specify how the event can be resolved, which is deliberate. It means that it encompasses a wide range of options, including the substitution of a new scheme funder. The trustees have the freedom to choose how best to resolve the event their scheme has had.

Clause 26 sets out the duty on the trustees to submit an implementation strategy to the regulator. Our aim is that members continue to save in a pension. Under continuity option 1, the situation is such that to protect members' rights it is necessary that the scheme transfer these rights out and wind up. The event that led to continuity option 1 will often not be about the scheme funder, so a new scheme funder would not rectify the issue. If the Pensions Regulator has had to withdraw authorisation, a new scheme funder will not be the right response. It is likely the regulator will have ensured the trustees considered this at an earlier stage. Under continuity option 2 the aim is that the triggering event is resolved.

The amendments seek to provide that continuity option 1 also covers the substitution of a new scheme funder, which seems to be a misunderstanding of what is provided in the Bill and would cut across how the two options are intended to work. Where the trustees have the choice about which to pursue, they can try to resolve it. Identifying a new scheme funder is just one of the ways to get that resolution. We do not want to limit schemes' options which is why we did not list particular solutions. The substitution of a new scheme funder already comes within continuity option 2 and its process.

We agree that where a master trust has experienced a triggering event, a new scheme funder could be identified, and could be the most appropriate resolution of a triggering event. This should be an option open to the trustees. That is why we have made the provision for continuity option 2. Continuity option 1 is solely about transfer out and wind up. The amendments would cut across the way in which the options and indeed, the regime as a whole, works in the Bill. With these explanations I ask the noble Lord to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am grateful to the noble Lord for setting the context and picking up on some of our previous debate on transfers. The purpose of the amendment was to test whether it is possible to have a replacement of a scheme funder when you are in the triggering circumstances that take you into continuity option 1. As it stands, if you are in continuity 1 processes, you have to follow the route of transfer and wind-up; you cannot have a replacement scheme funder. The purpose of the probe is to try to understand why that is. One route to deal with it is that, before getting to a triggering event, 1, 2 or 3, the regulator will have a process with trustees and there can be a nudge which takes us into continuity 2. I understand that, but I think the Minister has confirmed that if it is just straight continuity then that is it, you have no hope of having a replacement scheme funder. I am still a little unclear as to why that would be so.

I think the noble Lord said that substituting new scheme funders would not generally be appropriate given the state of the scheme, so it has to be addressed by these other arrangements. But that does not mean that there would not be arrangements where that could be entirely appropriate. So I think that there is still a bit of a gap in the Bill. However, having said that, I think that we have given it a good airing. I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Clause 24: Continuity option 1: transfer out and winding up

Amendments 20 and 21 not moved.

Clause 26: Approval of implementation strategy

Amendment 22 not moved.

Amendment 23

Moved by ***Lord Freud***

23: Before Clause 36, insert the following new Clause—

"Fraud compensation

(1) The Secretary of State may by regulations modify sections 182 to 187 of the Pensions Act 2004 (fraud compensation) as they apply in relation to—

(a) Master Trust schemes;

(b) schemes to which some or all of the provisions of this Part apply by virtue of section 39.

(2) Regulations under this section are subject to negative resolution procedure."

Amendment 23 agreed.

Clause 37: Minor and consequential amendments

Amendment 24

Moved by ***Lord Freud***

24: Clause 37, page 26, line 40, at end insert—

"(2) The Secretary of State may by regulations make provision that is consequential upon any provision of this Part.

(3) Regulations under this section may amend, repeal or revoke any provision of—

(a) an Act passed before or in the same session as this Act;

(b) subordinate legislation (within the meaning of the Interpretation Act 1978) made before the passing of this Act.

(4) Regulations under this section that contain provision mentioned in subsection (3)(a) are subject to affirmative resolution procedure.

(5) Otherwise, regulations under this section are subject to negative resolution procedure."

Amendment 24 agreed.

6.15 pm

Clause 38: Interpretation of Part 1

Amendment 25

Moved by ***Baroness Drake***

25: Clause 38, page 27, line 11, after "charge"" insert "can include, where appropriate, transaction costs, and subject to that,"

Baroness Drake: My Lords, there are four key references to administration charges in this Bill: Clauses 12 and 27, the continuity and implementation strategies for addressing how members' interests will be protected in a triggering event; Clause 33, the prohibition on increasing members' charges during a triggering event period; and Clause 40, the statutory override power of any term of a relevant contract on administration charges.

The power of the Secretary of State and the regulator to demand information on, and intervene on, the level of administrative charges, is a key part of the armoury in this Bill for protecting members' pots. Clause 38 gives a definition of administration charges: that it,

"has the meaning given by paragraph 1 of Schedule 18 to the Pensions Act 2014".

That schedule relates to the power of the Secretary of State to prohibit or cap administrative charges, as illustrated by the 0.75% cap on charges, excluding transaction costs, on workplace pension scheme default investment funds. But there appears no explicit reference to transaction costs in the definition of administrative charges in paragraph 1 of Schedule 18 to the 2014 Act, and no explicit reference to transaction costs in Clause 38.

The purpose of this amendment is to make it clear that any reference to administration charges in this Bill can include transaction costs, so ensuring that the Secretary of State and the Pensions Regulator have the fullest powers of intervention needed to fully protect members' charges in master trusts. The transaction costs are an important determinant of the net return into the saver's pot.

In recent weeks, including since this Bill was introduced into the House, three reports have been published. One addressed disclosure of transaction costs and two provided sustained evidence of continuing dysfunction and weak competition in the pensions and asset management industry. On 5 October 2016, the FCA published a consultation paper proposing rules to improve the disclosure of transaction costs in workplace pensions. Given the potential for multiple parties to be involved in managing pension investments and for transaction costs to be incurred at different levels, the FCA considers it essential that any rules of disclosure,

"enable the flow of information to the governance bodies of those schemes".

It proposes that all those managing investments should report administration charges and transaction costs to pension schemes and intends to publish its rules in the second quarter of 2017.

On 13 December, the DWP and FCA published their joint review of industry progress in remedying poor-value workplace pensions, following the 2013 OFT report that revealed that more than 333,000 members of workplace pension schemes were still suffering annual management charges in excess of 1%. The review also found that most providers had not fully reviewed the impact of transaction costs in their value-for-money assessments and had no immediate plans for such a fuller review. Providers using in-house investment management services were singled out for particular criticism.

In November, the FCA published its *Asset Management Market Study* interim report, which provided a hard-hitting critique of the "sustained, high profits" that the industry has earned from savers and pension funds over the years—fund management firms, which three in four British households rely upon to manage their pensions.

The remedies proposed by the FCA include requiring investment managers to adopt an all-inclusive single charge for everything; an up-front estimate of transaction costs; and raising the fiduciary bar for the general obligation to treat customers fairly to a new requirement to act in the best interests of investors. The report also contains a withering critique of "active management". A recent article in the *FT* pulled together all the adjectives deployed by the FCA:

"Underperforming, overpaid, too profitable, too expensive, too opaque, too unaccountable and too conflicted".

The report is quite extraordinary. It compares the net return on a £20,000 investment over 20 years to show the impact of charges. Assuming the same return before charges, in a typical low-cost, passive fund, an investor would earn £9,455 more on a £20,000 investment than an investor in a typical active fund. This figure rises to £14,439 once transaction costs have been taken into account. In an exquisite example of laconic drafting, the FCA reports:

"We find that there is no clear relationship between price and performance—the most expensive funds do not appear to perform better than other funds before or after costs".

The report makes it clear that seemingly small differences in fees and transaction costs can lead to significant losses for investors over time but finds that more than half of ordinary investors are still unaware that they were paying fund charges, let alone what they are.

I hope that the Government will force a pace on transparency and act to control unfair fees and transaction costs incurred by people who are saving, often through their workplace pensions, and an increasing number through these master trusts. But insofar as the Bill addresses the authorisation, supervision and resolution regime for master trusts, this amendment makes it clear that any reference to administration charges in any provision in the Bill can include transaction charges, so ensuring that the Secretary of State and the Pensions Regulator have the fullest powers of intervention needed to protect members' savings in master trusts, particularly during triggering event periods. I beg to move.

Lord Freud: My Lords, the effect of Amendment 25 would be to widen the definition of administration charges for the purposes of Part 1 of the Bill, so that it is capable of including transaction costs. It may be helpful if I explain that we considered the inclusion of transaction costs when developing this policy. We concluded that the provision that has been made in the Bill under Clause 33, including prohibiting an increase

in administration charge levels after a triggering event, was sufficient to minimise the risks faced by savers in master trust schemes.

The term "administration charges" may prompt Peers to believe that the prohibition in Clause 33 applies to only a narrow range of costs and charges faced by members. This is not so. Among the charges intended to be caught by the administration charge definition are fees on set-up, entry, exit, and regular and ad hoc fees paid not only to administrators but also many fees paid to governance bodies, regulators, asset managers, investment consultants, lawyers, accountants, auditors, valuers, bankers, custody banks, platform providers and shareholder service providers.

In the majority of cases, trustees do not currently have access to information about transaction costs. Including them within the scope of the prohibition under Clause 33, therefore, would place many trustees in a difficult position. I can assure noble Lords that we acknowledge the need for improved transparency and understanding by trustees about the transaction costs which the members of their schemes will bear.

Noble Lords will remember that, during the passage of the Pensions Act 2014, my department accepted a legal duty to make regulations requiring that transaction costs would be given to members of occupational pension schemes and be published. The Financial Conduct Authority took similar duties with regard to workplace personal pensions at the same time. Again, I acknowledge and thank my noble friend Lord Lawson for his input into the process of developing that part of the Act. I appreciate that some Peers may be disappointed that we have not yet discharged that duty, but in mitigation I should explain that there has never been a single agreed definition of transaction costs nor a way of calculating them. We have made progress in defining transaction costs, but until recently we made less progress on a way of calculating them. This is because many transaction costs are not explicit costs which appear on a scheme's balance sheet but implicit "frictional" costs from trading, which need to be calculated. The wide variety of approaches to calculating transaction costs are not simply disputes about the odd one-hundredth of a percent but quite significant differences in methodology, which can result in transaction costs differing by a factor of five.

We clearly need to ensure that trustees of occupational schemes and the independent governance committees of workplace personal pension providers have complete, consistent and standardised cost and charges information before they can report it to members; at this point, they do not. The key stepping stone to putting this information into the hands of trustees and independent governance committees was laid down when the Financial Conduct Authority published in October of this year a consultation on proposals requiring asset managers to disclose information about transaction costs to trustees, and a detailed methodology for calculating those costs. Following the outcome of the FCA's consultation, we currently plan to consult on the publication and onward disclosure of costs and charges to members in 2017. In conclusion on this point, I can assure Peers that we remain wholly committed to discharging this duty in the course of this Parliament. We want pension scheme members to have sight of all costs and charges, regardless of how they are incurred, and to give members the confidence that there are no other hidden costs and charges.

The noble Baroness, Lady Drake, made us aware of the interim findings of the FCA's *Asset Management Market Study*, published last month, which found weak competition in the market and proposed remedies through the introduction of an all-in charge and standardised disclosures to all investors. These are timely findings, because noble Lords may also be aware that the Government announced this month that they would be examining the level of the 0.75% charge cap on administration charges in the default funds of schemes used for automatic enrolment and whether some or all transaction costs should be covered by the cap. This work will be undertaken in 2017 as part of the review of automatic enrolment. It will involve comprehensive engagement with a wide range of stakeholders, including asset managers, which will be important given the potentially complex nature of transaction costs. The outcome of the 2017 exercise will help to determine whether there is a need to amend the definition of administration charges in Schedule 18 to the Pensions Act 2014, and at that point we will consider whether we should also cover transaction costs in the master trust legislation.

I reassure noble Lords that in practice we do not believe that transaction costs are a loophole that will be exploited to drive up charges to the detriment of members. Noble Lords will be aware that the vast majority of defined contribution pension schemes, including master trusts, are invested via investment platforms in pooled funds in which the trustees of the scheme will be just one among many investors. Given this pooled and intermediated nature of pension fund investments, it is highly unlikely that a triggering event experienced by just one of the investors in the fund would drive up the ongoing transaction costs from remaining invested in the fund. Taking these points into account, it does not appear necessary to bring transaction costs into the charge prohibition measure in the Bill.

Before I conclude, I ought to acknowledge that this is the last time I will stand before your Lordships on a Bill as a DWP Minister, although it is not quite my last appearance in the role, because we will have some fun on Wednesday discussing universal credit—I hope we will. On Third Reading in the new year, and when the Bill potentially returns to the House for further consideration after it has been looked at by the Commons, I will be leaving your Lordships in the very capable hands of my noble friend Lord Young—the junior member of the Freud/"Jung" combo. I thank him for all the support and time he has given me, and I am sure that noble Lords will continue to afford him the same courtesy and patience that has been displayed thus far.

6.30 pm

I take this opportunity to thank the Bill team for supporting my noble friend and me during the passage of the Bill. The members of the team have been assiduous in checking that I have had the right information and that I have been in the right place. More importantly, with their help, I have been able to have a really good

[LORD FREUD]
dialogue with noble Lords in the Chamber, dealing with the real issues rather than, as with some Bills, flailing around and waving the wrong end of the stick. We have waved the right end of the stick. I have not always enjoyed it, as was the case a little earlier, but I am deeply appreciative of the way in which noble Lords have always treated me when dealing with all my Bills, of which there are too many to remember. We have always had a dialogue and I have always nicked their good ideas—I make no apology for that—and I think that legislation has been improved as a direct result of that relationship.

I had hoped to send a clean Bill back to the other place, but noble Lords have mucked that up for me; nevertheless, I hope that it will not be even more unclean than it was a few minutes ago. With that in mind, I ask the noble Baroness to withdraw her amendment.

Lord McKenzie of Luton: My Lords, perhaps I may take the opportunity from these Benches to place on record our thanks to the noble Lord, Lord Freud, for the engagement that we have had on pensions Bills and other Bills over many years. That engagement has always focused on data and evidence. We might have disagreed about their interpretation from time to time but the debates have always been robust. The noble Lord has been assiduous in engaging with Members across the piece, making sure that their points and concerns have been addressed and not just brushed aside.

We will have the chance to say something to the Bill team on another occasion—I hope some of us will still be here at Third Reading—and we will have another debate on Wednesday. However, we wish the noble Lord well in his retirement. I am not sure whether it will be his retirement, as I am sure he will go off to do something intellectual. We look forward to working with the noble Lord, Lord Young, in the future, but from the Labour Benches we express our best wishes to the noble Lord, Lord Freud.

Baroness Bakewell of Hardington Mandeville: My Lords, I wish to associate myself and our Benches with the comments that have already been made. We have always found the noble Lord, Lord Freud, extremely accommodating towards us as far as he has able to be so, and I will have something further to say when we come to universal credit. I have taken over this role only fairly recently but I thank the noble Lord for all the help he has given us during the passage of this Bill.

Baroness Drake: I thank the Minister for his reply. It is helpful to have his wider statement on the record because this issue of transaction costs is still very controversial. I hope that the FCA's report increases the Government's sense of urgency regarding the need to address this issue and to introduce regulation—notwithstanding problems with definition—with master trust regulation benefiting from that as well.

Perhaps I, too, may take the opportunity to make a personal comment because I think this is the last time that I will be talking to the Minister in his current role, although he may not be talking to me at all following the vote. When he was at the Dispatch Box, I always felt that if I had a good argument, argued it well and had a good evidential base, I had a fighting chance that, first, he would listen and, secondly, that he would see whether it was possible to accommodate my concerns. He often made me do my homework and made me work hard on occasions, but that was a fair exchange. However, if I had a good point and good evidence, I knew I would get a fair hearing. That is important in this House. It incentivises one to pursue the argument and the case because one knows that one will get a fair hearing. The Minister is a wonderful example of someone who will listen and consider the arguments.

He has always been friendly, courteous and considerate in giving access to his civil servants and information—very often so that I can improve my knowledge base and not ask awkward questions; on other occasions to fuel my knowledge base to allow me to ask awkward questions. Either way, I was grateful for that.

I hope he takes some rest and has fun—he has worked very hard and deserves some fun—and that we see him back soon, bringing his intellectual skills to the House. I thank him for the statement on charges. I shall still push on transaction charges because millions of people get a rough deal but do not know they are getting a rough deal, which is even worse. I beg leave to withdraw my amendment.

Amendment 25 withdrawn.

Serious Disturbance at HM Prison Birmingham

Statement

6.36 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House, I will repeat a Statement made in the other place by my right honourable friend the Secretary of State for Justice. The Statement is as follows:

"With permission, Mr Speaker, I should like to make a Statement about the serious disturbance at Her Majesty's Prison Birmingham on Friday. I want to begin by paying tribute to the bravery and dedication of the prison officers who resolved this difficult situation. I also want to give thanks to West Midlands Police, who supported the Prison Service throughout the day, and to the ambulance crews and the fire service who also provided assistance.

This was a serious disturbance. I have ordered a full investigation and have appointed Sarah Payne—adviser to the independent Chief Inspector of Probation and former director of the Welsh Prison Service—to lead this work.

I do not want to pre-judge the outcome of the investigation. As we currently understand it, at 9.15 am on Friday at Her Majesty's Prison Birmingham, six prisoners in N Wing climbed on to netting. When staff intervened, one of them had their keys snatched. At that point, staff withdrew for their own safety. Prisoners then gained control of the wing, and subsequently of P Wing.

G4S immediately deployed two Tornado teams. At 11:20, Gold Command was opened, and a further seven additional Tornado teams were dispatched to

the prison. At 1.30 pm, prisoners gained access to two more wings. Gold Command made the decision that further reinforcements were needed and dispatched an additional four Tornado teams to the prison. At 2.35 pm, the police and Prison Service secured the perimeter of all four wings, which remained secure throughout the day. Shortly after 3 pm, there were reports of an injured prisoner. Paramedics and staff tried to intervene but were prevented from doing so by prisoners.

During the afternoon, a robust plan was prepared to take back control of the wings, minimising the risk to staff and prisoners. It is important that in this type of situation the right resources are in place before acting.

At 8.35 pm, 10 Tornado teams of highly trained officers swept through the wings. Shortly after 10 pm, the teams had secured all four wings. The prisoner who had previously been reported injured was treated by paramedics and taken to hospital, along with two other prisoners.

Throughout the day, the Prisons Minister and I chaired regular cross-government calls to make necessary preparations and ensure that the Prison Service had all the support it needed. I want to thank the Tornado teams, prison officers and emergency services for their exemplary work.

As I have said before, levels of violence are too high. We also have very concerning levels of self-harm and deaths in custody. That is why we are reforming our prisons to be safe and purposeful places and taking swift action to deal with drugs, drones and phones. It is important to remember that these problems have developed over a number of years and it will take time and concerted effort to turn the situation around. While these reforms take hold, we are continually working to reduce risk and ensure stability across the prison estate.

The Prison Service is leading Gold Command to collect intelligence, deploy resources and in particular manage the movement of prisoners. This includes managing two incidents at Hull yesterday morning which were quickly dealt with by staff. To date we have moved 380 prisoners out of Birmingham and we are continuing to assess the level of damage on the wings. The Prisons Minister chairs daily meetings with the chief executive and senior members of the Prison Service to monitor prisons for risk factors that might indicate potential violence and unrest. Where necessary, we are providing governors with immediate and targeted support ranging from extra staff and resources through to the transfer of difficult prisoners and speeding up repairs or replacements to facilities.

As we manage the current difficult situation, we are implementing our reform programme which will reduce violence and cut the £15 billion cost of reoffending, as laid out in the White Paper. In September, we rolled out tests for dangerous psychoactive drugs in prison, the first country to do so. We are rolling out new technology starting with three prisons to prevent mobile phone use. We are recruiting for a new £3 million national intelligence unit to crack down on gang crime. We are increasing staffing levels by 2,500 officers and taking steps to train and retain our valued staff. These include a new apprenticeship programme, a graduate entry scheme, fast-track promotions and retention payments; we are putting an extra £100 million into this.

We are modernising the estate with a £1.3 billion investment programme. We are also empowering governors to manage their regimes locally to get people off drugs, give them the skills they need and get them into work. Importantly, for the first time ever, in the prison and courts reform Bill next year we will be making clear that the purpose of prisons is about not just housing prisoners, but also reforming them. Together, these reforms are the right way to address the issues in our prisons so that they become purposeful places where offenders get off drugs and get the education and skills they need to find work and turn their back on crime for good.

The issues in our prisons are long-standing and are not going to be completely solved in weeks or even months. We are working to ensure that our prisons are stable while we deliver our reforms. Of course this is a major task. I am committed to this and so is the Prison Service, and I know that governors and prison officers are as well. The next few months will be difficult, but I am confident that we can turn this situation around and turn our prisons into places of safety and reform. That is my absolute priority as Secretary of State. I commend this Statement to the House".

My Lords, that concludes the Statement.

6.43 pm

Lord Beecham (Lab): My Lords, another week, another crisis for our underfunded, understaffed Prison Service, this time of a magnitude unmatched since the Strangeways riots 26 years ago. They prompted the seminal Woolf report. Last week I suggested that we needed another Woolf Report and I repeat the suggestion today. Thankfully, we still have the noble and learned Lord, Lord Woolf, among us, although I am unsure whether he would be willing to undertake the task, especially if there is to be no commitment by the Government to implement any recommendations which might emerge.

As matters stand, we have an unprecedented level of violence, self-harm and drug abuse, and several riots or near-riots occurring in what should be and must be quintessential places of safety. We are told that the Secretary of State was warned two months ago of the risk of a riot at Birmingham. Was she, and if so what action if any was taken to forestall trouble? For that matter what is the Government's response to the charge of Nick Hardwick, the former Chief Inspector of Prisons and now chair of the Parole Board, that:

"Successive ministers cannot say they weren't warned about this",

adding that he had been sounding warnings for several years?

Birmingham, a once renowned establishment, has been made a dangerous laughing-stock by the vacuous ineptitude of G4S, fully illustrated by the removal of a third of the prison population back to a state-controlled establishment away from the indiscipline and naive ideology of G4S and its hopelessly over-promoted and inexperienced management structures.

[Lord Beecham]
These are not my words, but those of Michael Kelly, a retired senior manager who worked at Birmingham for nearly 30 years.

Last week I commended the Secretary of State for her presentation of a White Paper on prison reform, but voiced regret over her stubborn failure to acknowledge that at the heart of the problem lies the fact that we have far too many people in prison and too many of those are jailed for too long. We need to reduce our prison numbers—the fourth highest, in proportion of population, in Europe. This should include reviewing the length of sentences.

Several Members, across the House, have tried to pursue this issue. My noble friend Lady Smith, for example, tabled two Written Questions on 22 November, respectively on drug use and violence, and on the ratio of staff to prisoners. She should have had an answer by 7 December. She has not. There are seven other MoJ Questions beyond their reply date. Nor can the adequacy of any reply be taken for granted. I asked about the number of prisoners on remand and how many of them ultimately did not receive custodial sentences, only to be told that the information was not available and would be too expensive to collect. There remains, of course, the oft-challenged failure of the Government to deal with the vexed question of IPP prisoners held long after the tariff for their sentence has been exceeded. Both these groups contribute to the overcrowding which places such enormous pressure on prisoners.

There is widespread scepticism about the Government's plan to recruit extra staff. Some 2,500 are promised, but this would still leave the workforce down 4,500 from what it was just a few years ago. In addition, it is estimated that some 5,000 more will have to be recruited to replace officers retiring or securing jobs outside the service—numbers which may well be enhanced by recent events.

Pay for the men and women willing to work in this challenging environment clearly needs to be reviewed. New starters can expect to earn all of £20,544 and qualified officers £21,166. G4S, I understand, recruits on a weekly basis from the jobcentre. In these circumstances, the Secretary of State's call for officers to be recruited might be compared to the captain of the "Titanic" telegraphing the ship's owners for additional crew members after the iceberg has struck.

We need to reduce prison numbers. This means looking at sentencing policy with a view to reducing the length of sentences, and investing in well-run probation services—where there are also signs of growing pressures—and health, especially mental health, services. We need the Secretary of State and the Ministry of Justice to exercise greater oversight of the system, listen to the advice of the Chief Inspector of Prisons and the Parole Board and cease to rely so heavily on providers such G4S, with a reputation as providers of everything and masters of next to nothing.

Lord Beith (LD): My Lords, in thanking the noble and learned Lord for repeating the Statement I ask him to recognise that, but for the skill, courage and day-to-day resourcefulness of prison officers and governors across the prison system, there would have been even more serious and violent incidents than have occurred. The prison system is holding far more prisoners than it is resourced to manage. As a result, rehabilitation programmes are disrupted or not in place at all. To make matters worse, when there are riots those prisoners who want to do their time peaceably, take the courses and train for a job are prevented from doing so and therefore more likely to reoffend when released.

I put two questions to the noble and learned Lord. First, will he say whether G4S had fallen short of its contracted staff numbers at Birmingham? Then, on the wider question, when will Ministers accept and cease to deny that there are offenders in prisons who could be better dealt with by tough community sentences? Unless we use the expensive resources required for prison places more sensibly, as most other European countries do, and unless we address sentence inflation we will build up even more potential for future violence in prisons. Getting the numbers down is not a quick solution to the immediate crisis, but if Ministers do not begin to deal with it now the problems in our prisons and outcomes on release will just get worse.

Lord Keen of Elie: I am obliged to noble Lords. I begin by responding to some of the observations made by the noble Lord, Lord Beecham. Staff in all our prisons, whether public or private, work hard to keep prisoners safe and to address the causes of reoffending. Our recently published data show no obvious differences in performance levels between public and private prisons. There are of course issues across the entire prison estate, seen in both public and private sector, and there is no question but that these are attributable to a mix of factors, including the increased use of psychoactive substances, the increased availability of mobile phones within prisons, the increased level of gang violence within prisons, as well as issues about retention of staff and numbers of staff, all of which we are seeking to address and have addressed already by virtue of the White Paper. So far as G4S is concerned, we robustly monitor the performance of all contractors providing services to the Ministry of Justice, and privately managed prisons are subject to the same rigorous external inspections as those in the public sector by Her Majesty's Inspectorate of Prisons.

With regard to the question raised by the noble Lord, Lord Beith, as to the precise number of staff at Birmingham, I do not have those numbers to hand but I am quite happy to write to him and will place a copy of that letter in the Library once I have the relevant information.

On sentencing, since 2010, the prison population has remained relatively stable and static, at about 85,000. There has been a marked decrease in the number of those serving short sentences, by 1,500, but there has been an increase in the number of those serving longer sentences, especially for sexual offences and offences involving violence. Public safety must be at the forefront of our minds when we address these issues.

We are seeking to increase staffing levels across the entire prison estate and are investing in the prison estate itself—a £1.3 billion programme is under way.

In February next year, Her Majesty's Prison Berwyn will open in Wrexham. It will be the second-largest prison in Europe and will ensure that we have enough capacity within the prison estate to address overcrowding.

So far as an investigation is concerned, as I indicated previously, there is already a proposal that an inquiry should be undertaken by Sarah Payne, adviser to the independent Chief Inspector of Probation. We will await the outcome of that investigation before we decide what further steps should be taken.

6.52 pm

Viscount Hailsham (Con): My Lords, while those who have been involved in the disturbances must clearly be punished appropriately, does my noble and learned friend accept that what has happened demonstrates the evils associated with overcrowding and the lack of purposeful activity? Does he agree that we must take urgent steps to reduce the prison population? In the short term, I suggest an urgent review of all the IPP prisoners who have served their tariff. I also suggest that he consider executive release for those short-term prisoners who have served a substantial part of their predicted period in custody.

Lord Keen of Elie: I am obliged to my noble friend. With regard to those serving IPP sentences, further considerable progress is being made. For the first time, during 2015, more than 500 IPP prisoners were released, compared with only 200 or 300 in previous years. In 2015-16, 38% of IPP oral hearings completed by the Parole Board resulted in a release decision. For the first time, the number of IPP prisoners has fallen below 4,000, and we are continuing to increase our efforts with regard to those prisoners. So far as the prison population is concerned, there are from time to time strains; there are from time to time pressures on prison capacity. However, as I have said, steps are already being taken in the form of the opening of new prison estate in the new year, which will relieve any such pressure. On sentencing policy, there are no further steps at this stage that I can comment on, but clearly we have in consideration the question of how the prison population is maintained. So far as work is concerned, increased efforts have been made to provide useful, constructive work for those within the prison estate, not only so that they can work during their period of sentence but so that they have an opportunity to move into work as they move through the gate of the prison at the end of their sentence. However, we must remember that something like half the prison population enter prison with unacceptable levels of numeracy and literacy. There are formidable challenges ahead. We are prepared to meet them—and intend to.

Viscount Slim (CB): My Lords, I should declare that some years ago, after the comparatively easy escape by Blake and the subsequent Mountbatten report, I was instructed, with a small team, to speak to prison governors to see if we could make it a little harder to escape from prison. I was most impressed with the prison governors. We had a two-day seminar with every prison governor in Britain. I will not go into the details because we are time-limited, but two possibilities came out of that which had not been considered—and I believe have been forgotten since.

First, there is a helicopter snatch from a prison. Making a prison a no-fly zone will ease that rather than make it a no-go. Noble Lords may remember a very successful helicopter snatch from the Isle of Wight prison. However, the thing that perturbed us most was the possibility of a break-in to break out a top terrorist or top criminal. That had not really been considered at that time. With our enemy within and the way things go now, that ought to be resuscitated and looked at. You need more than a Tornado team to deal with it. You are dealing with armed intervention and explosives. There are devious and clandestine ways but a prison distraction such as we have just seen is ideal for such an operation.

Lord Keen of Elie: I am obliged to the noble Viscount, Lord Slim. It would appear that his conversations had some effect because 2015-16 saw the lowest number of absconds from prisons—105—since records began. With respect, the more immediate issue is not helicopters but drones. We have taken steps to introduce further penalties to limit the use of drones in and around prisons. Indeed, noble Lords may be aware of the recent conviction of an individual for the use of a drone to take material into prison. That resulted in a sentence of imprisonment for 14 months—not helping the issue of overcrowding, I accept, but nevertheless bringing home to people the risks associated with the use of drones in and around prisons.

Baroness Farrington of Ribbleton (Lab): My Lords, the Minister will recall my noble friend Lord Beecham's reference to the cuts in prison staffing. The Minister in this House, answering a Question from me, said that the way the Government calculated the need for prison officers had changed as per a letter saying what factors were taken into account. Is it drugs or violence—what is it? The Minister has not furnished the House with the justification for the government cuts in the staffing ratio.

This is not to do with the number of prisons being reduced, as the Minister said then. It is the staffing. It is no good and it will ring hollow to the loyal, hard-working prison officers when Ministers "support" them but are also responsible for cutting the staff who can deal with young prisoners, many of whom are semi-literate and ill educated. If people are shut in their cells for a long time, it is not surprising that their education does not improve. This is a scandal of the Government's making; all the professional advice warned the Government that it was looming. We do not want more reports—we want action.

Lord Keen of Elie: With respect to the noble Baroness, Lady Farrington, that is precisely what this Government are providing. Let us not look back but look forward. We are looking forward to providing, more or less immediately, 400 additional prison officers, many hundreds of whom have already been recruited. We are looking forward to providing another 2,500 prison officers. As I say, let us look forward to what we are seeking to achieve, not look back to what has been.

Lord Faulks (Con): My Lords, I am sure the House would be interested, if my noble and learned friend can tell us, in whether drugs played a significant part in what went on in Birmingham, although it may be

[LORD FAULKS]
that that will have to await the inquiry. However, can my noble and learned friend confirm that drugs are not only a problem because they tend to create aggression in prisoners, but because they also create an atmosphere where money is owed by one prisoner to another and gangs are set up, the combination of which is quite toxic? I note that the Statement said that the Government are rolling out tests for dangerous psychoactive drugs in prison. Will the Minister please assist us and tell us how that rolling out is going and what the Government hope it will achieve?

Lord Keen of Elie: I am obliged to my noble friend. It is too early to say whether drugs played a direct part in the incident at Her Majesty's Prison Birmingham. No doubt that will be the subject of inquiry during the course of the investigation, which I have already referred to. However, the development of a prevalence of psychoactive substances in prisons has been a major factor in engendering violence for the two reasons that my noble friend indicated. First, the use of these drugs engenders behavioural changes that lead to violent conduct, and, secondly, the competition for control of these drugs leads to further intimidation and violence within the prison estate—there is no question of that. We have struggled to address the issue of psychoactive substances but we have now reached the point at which we have developed blood tests that are effective in identifying their use. That has been a considerable challenge, and we are now essentially a world leader in that field. Those tests will be rolled out to control the use of psychoactive substances. It is believed that that will assist in reducing the level of violence within our prison estate.

Baroness Masham of Ilton (CB): My Lords, does the Minister agree that food, occupation and washing facilities are very important? Are these at a decent level in all our prisons? How many other incidents have there been across the country in the past year in various prisons? A few months ago, I visited HMP Moorland near Doncaster, and found it very run-down and rather dirty. Morale in prisons is so important. Does the Minister agree that well-trained prison officers can spot things before they happen, and that therefore there should be many more?

Lord Keen of Elie: I am obliged to the noble Baroness. Of course well-trained prison officers have the ability to identify problems that are developing, which those of lesser experience will not be able to do. Eighty per cent of the present cohort of prison officers have five years' experience or more in their job. We are not only working hard to recruit new prison officers but we are working very hard on a programme for the retention of prison officers, because, as the noble Baroness indicated, experience is as important as numbers.

I am not in a position to comment on individual prisons on a case-by-case basis. However, clearly, what lies behind our intention to invest £1.3 billion in the prison estate is the desire to ensure that there are decent conditions available for prisoners during their sentence. I accept that there was an incident at Moorland. There was an incident at Bedford and there have been others during the year. Those clearly place strain on the prison estate, prison officers and staff in general. However, we are responding positively to those concerns. One of our principal aims is to ensure that rehabilitation and the opportunity for work and education are principal goals in the context of prison policy.

Lord Woolf (CB): My Lords, I am grateful for the answers that we have had to the questions raised. As the House knows, the Strangeways inquiry resulted in my giving a report and since that time, I have followed up what has been happening in prisons, not least because of my involvement with the Prison Reform Trust. Does the Minister agree that it has to be recognised that overcrowding is a cancer that can destroy all the best endeavours in prisons? I am afraid that any answer given to the problems which does not take that into account, notwithstanding what was said about building more prisons, will not really root out the problem because the sort of things which the Minister has talked about are so much more difficult. Finally, does he agree that it is a particularly difficult time in prisons when they go through a process of reform? That was true just before Strangeways and we are, I hope, going through a period of reform now. Are Ministers conscious of that?

Lord Keen of Elie: I am obliged to the noble and learned Lord. We are of course conscious of the demands placed upon the prison estate and prison staff at a time of change. It will be demanding as we go forward with the development of the new prison estate. Clearly overcrowding, not on its own but as part of that terrible mix of issues, can lead to difficulty, danger and violence in our prisons. That is why we are concerned to address the issue of overcrowding as swiftly as we possibly can.

Lord Lee of Trafford (LD): My Lords, when the Minister made his last Statement I asked him how bad things have to become in our prisons before we look to the Armed Forces to help. Given the seriousness of the current situation and how critical it is, should we now consider the use in some shape or form of either elements of the Reserve Forces or recently retired members of the Armed Forces or police to help in manning the situation in our prisons? If we lock prisoners up for 23 hours a day and treat them like animals, it is no wonder if we get the sort of situation that tragically happened in the last 48 hours.

Lord Keen of Elie: There is no requirement at this time to call upon outside bodies to assist with the maintenance of order within our prisons. That has been dealt with not only by prison staff in general but by the specialist Tornado groups that were called in and resolved the issue at Birmingham. However, in this context, as part of our recruitment programme we are looking to recruit former members of the Armed Forces who have particular training, service and expertise in areas that can come to bear upon the control of prison populations.

Lord Cormack (Con): My Lords, could the inquiry look carefully at the role of G4S and other private contractors? There are many of us who feel that the incarceration of our fellow citizens should be the

responsibility of the state and should never be contracted out. As this has occurred in such a prison, can this form a central point of the inquiry?

Lord Keen of Elie: I am obliged to my noble friend. As I indicated earlier, all recent published data show that there are no obvious differences in performance levels between public and private prisons. We therefore consider that we should continue with our endeavour of ensuring that the prison estate can be controlled and provided across both the public and private sectors.

Lord Elystan-Morgan (CB): Does the noble and learned Lord accept that our courts could send fewer people to prison without there being unacceptable risk to the public? Has the time not come to review whether further judicial guidelines should be issued with a view to bringing this situation to an end?

Lord Keen of Elie: My Lords, with respect to the noble Lord, there are very detailed sentencing guidelines now available throughout the magistrates' courts, which deal with about 90% of all crime, the Crown Courts and the highest courts with regard to disposal. They are constantly reviewed and considered in order to try to ensure that we can minimise the extent of detention as a punishment. Clearly, the hierarchy begins with the forms of disposal that would prevent detention, whether they are a financial penalty or some punishment within the community. That continues to be our policy.

House adjourned at 7.10 pm.

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