Vol. 779
No. 115

Tuesday
28 February 2017

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Tuesday 28 February 2017

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

Drones

Question

2.36 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what progress has been made in the last 12 months to address the challenges raised by the number of drones, particularly in relation to safety and security risks; and whether they intend to introduce legislation to regulate their use.

The Parliamentary Under-Secretary of State, Department for Transport (Lord Ahmad of Wimbledon) (Con): My Lords, a cross-government programme of work has made progress in a number of areas. This includes research to understand the risks to manned aviation; trials to explore options to detect and counter drones; meetings directly with manufacturers to improve technical solutions; and an expanded campaign to raise awareness of the safety rules. My noble friend will also be aware that, in December, a consultation on the safe use of drones in the UK was launched, which will inform the development of any future regulation.

Lord Naseby (Con): My Lords, I am grateful for the depth of that Answer. Nevertheless, it is well over a year since I asked a Question on this subject. Is my noble friend aware that, in the subsequent period, the threat of terrorism has heightened and the misuse of drones has heightened? I asked whether we had looked at the laws passed in the United States and in Ireland, both of which have been successful. Are we sure now that we can get a grip on the manufacturers, and those who produce kit products, wherever they are sold, to produce strict laws that the consumer can understand and then can be enforced?

Lord Ahmad of Wimbledon: My noble friend raises an important point. We are all acutely aware of the growing challenges of terrorism to our country and the threat around the world. In this regard, I reassure my noble friend that the Government are fully aware and cognisant of the measures that have been taken, as he rightly listed, in places such as the US and Ireland. Our consultation, as I am sure he has seen from the detail, has been informed by their experience. That consultation closes in March and, at that point, we will look at what further regulations can be implemented.

My noble friend will also be aware that part of the challenge has been about informing the general public about the existing laws, which restrict and encourage the responsible use of drones. We are fully cognisant of the technology advancements in this area, so it is important that before legislating we look at what is happening elsewhere—but also at the consultation results as well.

Lord Rosser (Lab): I believe that the Government's consultation document is 58 pages long. It covers a wide range of issues relating to drones and is not just about safety and security. We cannot wait months while the Government consider their response to all the many questions posed in the consultation document about drones before decisions are made on what changes are needed to the safety and security laws and procedures. Will the Government give a clear and unambiguous assurance today that the issue of safety and security and the responses received on the issue will be treated as the number one priority for conclusions to be reached, and that decisions will be announced following the conclusion of the consultation in the middle of this month—and dealing with the safety and security issue will not have to wait until the Government have reached their conclusions and made their decisions on all the other issues relating to drones raised in the consultation document?

Lord Ahmad of Wimbledon: My Lords, just to correct the noble Lord, I am sure that he meant "next month". I was just checking dates—and I know that there was a late ending yesterday. Towards the middle of March we will, as I said, be concluding the consultation. He has asked me before about timelines; we are looking to produce our consultation results, including the important areas that he mentioned—and yes, the Government have prioritised those areas. The consultation looks comprehensively at those issues and the positive use of drones, and we will look to produce our conclusions from that consultation in the summer of this year.

Lord Hylton (CB): My Lords, the Minister will know that I was one of the first to draw attention to the risk of collisions between drones and airliners. Do the Government have at least a contingency plan for total exclusion zones for drones around the incoming and outgoing flight paths of major airports?

Lord Ahmad of Wimbledon: The noble Lord raises an important point about safety around airports. We are looking much more extensively at the issues of geo-fencing around critical sites such as airports. Nevertheless, as I am sure the noble Lord is aware, there were 70 reported incidents in 2016 and that was 70 too many. It is important that, as technology advances, we look at more rapid and rigid enforcement of geo-fencing.

Lord Teverson (LD): My Lords, there were indeed 70 incidents, 25 of which were at Heathrow. The Vehicle Technology and Aviation Bill has just been introduced in the House of Commons. This seems the perfect place to add legislation and rules in this area. At the moment the Bill includes lasers, but it does not include drones. Will the Minister undertake that, when the Bill comes to this House, the Government will put forward suitable amendments to include drones?

Lord Ahmad of Wimbledon: Of course we will have a discussion about the important issue of lasers. The noble Lord is quite right to point out that that is included in the Bill that he mentioned. I am not going to prejudge what conclusions are reached in the other place—or indeed in this place—regarding what legislative

[Lord Ahmad of Wimbledon]
vehicle will be used for the purposes of drones. It is important that we look at the full review of the consultation taking place in the middle of next month and then consider its results in the summer of this year.

Lord Howell of Guildford (Con): My Lords, the Government may be cognisant of all the drone problems, but are the prison authorities cognisant of them? Are the reports that a lot of drugs are delivered into Her Majesty's prisons by drones not correct? Surely steps should be taken to stop that before anything else.

Lord Ahmad of Wimbledon: My noble friend is right to raise this important issue. Let me assure him that new laws have been implemented and measures taken to deal with the problem of the delivery of drugs into prisons. Equally, let me reassure my noble friend that I am talking to Ministers across both the Home Office and the Ministry of Justice. We will be convening a meeting with manufacturers, either next month or in April, to talk directly about the importance of ensuring that all safety and security aspects are covered.

Lord Campbell-Savours (Lab): My Lords, the Minister will recall a debate before Christmas in which his attention was drawn to the availability of drone-jamming signal equipment which could be used to an operational distance of 2,000 feet. It would be avoided by drone users because they would be likely to lose their drones. Why cannot we order and use this equipment to cover our airports?

Lord Ahmad of Wimbledon: The noble Lord is right: he pointed out that specific issue, which I have taken up directly with officials. I would ask him also to take part in the consultation. We will be raising his specific point directly with manufacturers.

Lord Stevens of Kirkwhelpington (CB): My Lords, I declare an interest as president of the Aircraft Owners and Pilots Association and the holder of a current commercial pilot's licence. I flew myself down here—safely—today. There is an answer in relation to controlled airspace around Heathrow and Gatwick. When nobody can go into controlled airspace without authority, surely a quick answer is to prohibit any drones in that area?

Lord Ahmad of Wimbledon: The noble Lord obviously speaks from experience in this area. He will be aware that the CAA has a specific regime around the commercial operation of drones. We are looking at these particular regulations to see how they may be extended. As I said, we have a wide-ranging consultation and we wish to wait for the results of that.

Bilateral Trade: Sri Lanka

Question

2.45 pm

Asked by ***Lord Sheikh***

To ask Her Majesty's Government what is their assessment of opportunities to enhance bilateral trade between Sri Lanka and the United Kingdom.

The Minister of State, Department for International Trade (Lord Price) (Con): As the UK leaves the EU, our aim is to avoid disrupting the strong trade relationship we have with Sri Lanka. In the future we will consider all opportunities to deepen this relationship and expand bilateral trade. I look forward to discussing this with the Sri Lankan Government at the meeting of Commonwealth Trade Ministers in London this March.

Lord Sheikh (Con): My Lords, I thank my noble friend the Minister for his reply. Sri Lanka is expecting economic growth of 5.5% this year, and has signed free and regional trade agreements with other nations, with another under negotiation with China. Does the Minister agree that Sri Lanka should be an integral part of our global business strategy to approach new international markets? Will he consider the possibility of appointing a trade envoy for Sri Lanka and of sending a ministerial-led trade delegation to the country?

Lord Price: I agree with my noble friend that the economic situation in Sri Lanka is improving. We are delighted to see the growth forecast of 5.5%. It is also heartening that exports from the UK to Sri Lanka increased by 46% in 2015 and exports from Sri Lanka to the UK stood at £1.1 billion. More than 100 UK companies have an affiliation in Sri Lanka. I am delighted that the UK Government are keen to support Sri Lanka moving to the GSP Plus scheme, which will remove tariffs on 66% of goods. At the Commonwealth meeting that we are holding next month we hope to think more about how we can strengthen those ties. There are no plans to have a trade envoy for Sri Lanka but we will continue to work with it to improve our trade relationships.

Lord Wallace of Saltaire (LD): My Lords, the Minister puts a great deal of stress on the Commonwealth as a framework. We have heard a great deal from the Government about how the Commonwealth, as a network, is going to replace Europe as the driver for British exports. Will he give us some specific examples of cases where membership of the Commonwealth has inclined the Sri Lankan Government or companies in Sri Lanka to favour the British against others in particular contracts?

Lord Price: We believe that there are extensive opportunities to improve trade throughout the Commonwealth, and that is what our meeting next week is going to draw out. The Prime Minister has already announced working groups with Australia, New Zealand and India. We want to work with all 52 countries in the Commonwealth on how we can drive forward the best possible trading relationships. There are many ways that can be done. They can be unilateral arrangements; they can be EPAs or FTAs. We need to consider for each country what is in their best economic interests and those of the Commonwealth.

Lord Rogan (UUP): My Lords, Sri Lanka had a torrid time with civil unrest for many years. Thankfully, those terrible times have ended. Does the Minister agree that trade with Sri Lanka, and improving the economy of that country, will strengthen and help cement that peace process?

Lord Price: I agree. Trade indeed brings peace and prosperity and, through that, improves living standards. Improving our trade links with Sri Lanka and other Governments will lift people from poverty and bring a peace benefit.

Baroness Symons of Vernham Dean (Lab): My Lords, I declare an interest as the chairman of the Arab-British Chamber of Commerce. These free trade agreements—not just in Sri Lanka, but elsewhere—are a crucial part of government strategy over Brexit. In your Lordships' House there is a great deal of interest in how they will develop. Will the Minister consider convening a meeting of interested Peers to brief us on how free trade agreements are going and what has to be taken into consideration?

Lord Price: My Lords, I am convinced that, over the next two years, there will be an awful lot of briefings for Members of this House and the other House about our trade arrangements. I reassure noble Lords that at some point we will be able to talk about our trading relationships and trade policy.

Baroness Berridge (Con): My Lords, I am sure that my noble friend the Minister will draw to the attention of fellow Commonwealth Trade Ministers the recent research which revealed that it is about 19% cheaper to trade within Commonwealth countries. But, as the noble Baroness, Lady Symons, outlined, could we please have an assurance that human rights will also be raised at the meeting? If not, we face the same government department having different compartments dealing with different issues, rather than all the issues around the table at the same time.

Lord Price: I can give my noble friend that assurance.

Lord Stevenson of Balmacara (Lab): Further to my noble friend's question, is there not an earlier opportunity to have a bit of a debate about this issue? Do we not have on the horizon an agreement with the Canadians, the CETA agreement, which was signed with the EU recently and which is now going around national parliaments? I do not see a date for it coming up on our agenda but no doubt the Minister will be able to advise us when it will happen.

Lord Price: My Lords, there have been lots of discussions about CETA. It has been discussed in the other place and in this House. If there are any new dates I shall, of course, present those to the noble Lord and others.

Lord Naseby (Con): Is my noble friend aware that I visited Sri Lanka in January and had discussions with the high commissioner? I declare an interest as president of the all-party group. It seems to me that we are rather late at the party. As has been mentioned, Sri Lanka already has more than three new agreements with other countries. Can we please get a move on and listen further to my noble friend's suggestion that we send out a trade envoy, even if only on a short-term basis?

Lord Price: My Lords, I thank my noble friend for that encouragement. As part of the EU, we currently have a trade agreement with Sri Lanka under the GSP scheme. As I said earlier, we are very keen now to upgrade that to the GSP Plus scheme. I am sure that at the Commonwealth meeting next week we will talk about how we take forward the trade agenda with all 52 countries, including Sri Lanka.

Police Intellectual Property Crime Unit

Question

2.52 pm

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

To ask Her Majesty's Government whether they have committed to continue funding the Police Intellectual Property Crime Unit.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, the Government recognise the important role that intellectual property plays in protecting and supporting investment and creativity of all kinds. The Police Intellectual Property Crime Unit plays a vital role in disrupting the activities of those engaged in intellectual property crime. There is no question about the Government's continuing commitment to the unit. The Government are in the process of discussing how the PIPCU should be funded in future. We shall make a statement in due course.

Lord Clement-Jones (LD): My Lords, "In due course"? We are one month from the beginning of the financial year of this internationally renowned and hugely successful unit in the fight against intellectual property crime and it is still waiting to hear whether it will continue to be funded and to what extent. This is a cause of huge concern to specialist police officers as well as to the wider creative sector and other industries. This is a disgrace. Does it not demonstrate that the Government are not taking intellectual property protection and enforcement seriously?

Lord Prior of Brampton: My Lords, I reiterate what I said in my Answer to the Question: we are fully committed to funding PIPCU. As the noble Lord knows, when PIPCU was set up in 2013, the intention was that the Government would fund it for a short period of time and that subsequently it would be funded by the rights holders as the insurance industry organised itself. This is not the case, so we are having to look at alternative means of supporting the unit. However, as I have said, those who work in PIPCU need have no concerns about whether the Government are fully committed to it.

Lord Harris of Haringey (Lab): My Lords, I declare my interests in both policing and trading standards. Could the Minister tell us how many prosecutions this highly successful PIPCU has carried out in the past year and what proportion of those prosecutions was directed at the producers and wholesalers of fake goods, as opposed—simply and more easily—to those caught trading in counterfeit goods?

Lord Prior of Brampton: My Lords, I cannot give him the figure offhand. The figure of 57 rings a bell with me, but I shall have to check the number and write to the noble Lord. I can tell him that between March 2014 and December 2016, PIPCU shut down 11,000 websites selling counterfeit goods and 1,300 websites infringing copyright—so it has been extremely active. But I shall write to him on that point.

Lord Foulkes of Cumnock (Lab): Yesterday the Minister showed that he has deep concern for disadvantaged people. Surely he can be more sympathetic to the Liberal Democrats about their loss of intellectual property.

Lord Prior of Brampton: My Lords, it is very hard to lose what you never had.

Noble Lords: Oh!

Lord Stevenson of Balmacara (Lab): Returning to the main subject, as I am sure the noble Lord is aware, the police intellectual property office is also responsible for the National Fraud Intelligence Bureau—also widely regarded as being a terrific service which we would be sad to lose if there were funding problems. I visited it as part of my secondment with the Metropolitan Police—a scheme that I recommend to all Members of the House as giving an insight into the way the police operate. However, this goes back to the Question from the noble Lord, Lord Clement-Jones. Without certainty as to funding, there will be very damaging implications for crime. This crime needs to be stopped at source and this is the main unit to do so.

Lord Prior of Brampton: The noble Lord makes a good point. Of course, certainty is very important, but I draw the House's attention to the fact that the US Chamber of Commerce rates our IP enforcement as number one in the world, as does the Taylor Wessing global IP index. We are doing a great job, so let us not beat ourselves up too much about this. We need to resolve this uncertainty about funding but we are doing an excellent job.

Lord Sharkey (LD): My Lords, in the second quarter of 2016, 51 million pieces of film and TV content were accessed illegally according to the IPO. The Government have said that they believe that this illegal activity is covered by existing laws. If that is the case, why are there so few successful prosecutions for illegal access?

Lord Prior of Brampton: My Lords, I think this issue was debated during consideration of the Digital Economy Bill, and I understand that the noble Lord and others wanted to see it addressed in that Bill. Our feeling is that existing laws are sufficient and that, in any event, this matter could be addressed outside the Bill. I believe that we are putting out a call for evidence on it from users to absolutely nail this point, but I am a little hazy about this area, so I will write to the noble Lord, if I can, after today.

Lord Clement-Jones: My Lords, rising above the considerable intellectual property of the noble Lord, Lord Foulkes, perhaps I may come back to the Minister on the question of commitment. He says that he is committed but that could mean £1 or the full budget asked for by PIPCU. Is he committing to a level of funding no lower than the previous level? Is that what he is really saying?

Lord Prior of Brampton: My Lords, I think that since PIPCU was set up we have spent about £5.6 million on supporting the unit, which I believe has 20 full-time policemen, detectives and others. We are certainly committed to that sort of level of funding for PIPCU.

North Korea

Question

2.58 pm

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government, in the light of the sanctions imposed by China against North Korea following the assassination of Kim Jong-nam and the recent ballistic missile test, whether they will call in the North Korean Ambassador.

Lord Alton of Liverpool (CB): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In so doing, I should mention that I am co-chairman of the All-Party Parliamentary Group on North Korea.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, on 14 February we summoned the ambassador for the Democratic People's Republic of Korea in response to its ballistic missile test on 11 February. We made it clear that such actions were in violation of UN Security Council resolutions and a threat to international security, and that such destabilising activity must stop. We continue to be deeply concerned by its actions, including reports that it is responsible for the killing of Kim Jong-nam.

Lord Alton of Liverpool: My Lords, does not the horrific use of VX, a toxic nerve agent, to assassinate Kim Jong-nam serve to remind us of North Korea's total disregard for international law, whether through the use of banned chemical weapons, of which it has some 5,000 tonnes, its nuclear and missile test, or the execution and incarceration of hundreds of thousands of its own citizens? Has the noble Baroness noted that at the 34th session of the United Nations Human Rights Council, which is currently meeting in Geneva, there are recommendations to establish an ad hoc tribunal or to refer North Korea to the International Criminal Court? Will we be endorsing this and seeking China's support to bring to justice those responsible for these egregious and systemic violations of human rights?

Baroness Anelay of St Johns: The noble Lord is right in his condemnation of the DPRK's complete disregard for international norms. Dealing with those is a difficult matter. We certainly support the UN Commission of Inquiry and want to see how we can take forward its recommendations.

With regard to the alleged use of VX, Malaysia has gathered its own information. We have no reason to doubt its conclusions that it is VX, a highly toxic nerve agent, and that the the DPRK is responsible, since it has the capacity to produce it. Until there is an international awareness of that information, we cannot take action internationally to condemn what has happened and provide the evidential link between the DPRK and the murder of Kim Jong-nam.

Lord Robathan (Con): My Lords, there was a very similar assassination on British soil not a mile from here—that of Alexander Litvinenko—by the Russian Secret Service. Can my noble friend please tell us when she last called in the Russian ambassador, and what progress has been made on that inquiry?

Baroness Anelay of St Johns: My Lords, I cannot recall the exact date because, of course, I do not call in the Russian ambassador. But I can reassure my noble friend that I am aware that the Russian ambassador has been called in on at least one occasion last year with regard to Russia's disregard for international norms. Whatever country uses international murder to dispose of people who are inconvenient to it is wrong and should face international opprobrium.

Lord Anderson of Swansea (Lab): My Lords, China is the key player in relation to North Korea, and its action appears to complete the isolation of that country. How do the Government interpret its sanctions? Are they temporary, or can we expect a sea change in China's policy?

Baroness Anelay of St Johns: The noble Lord is right to point to the fact that China has now made it clear that it is compliant with the UN Security Council resolution on sanctions on the coal trade between the DPRK and China. On 18 February this year, China declared that it would be fully compliant. It had actually been in breach in December, so it has made sure that throughout the whole of this year it will now be compliant. We welcome that public declaration and look forward to receiving further details about how it is observed. It was an important step forward.

The Lord Bishop of Peterborough: My Lords, I have a particular interest in those who escaped from North Korea, both through my membership of the all-party group and the link that we have in the diocese of Peterborough with the diocese of Seoul in South Korea, which does a lot to support escapees. Can the Minister please tell us whether our Government are talking to the Government of China about their apparent policy of sending refugees straight back to North Korea, where they face execution or incarceration in camps, and whether we will ask China to allow people freedom of passage to those countries which welcome them?

Baroness Anelay of St Johns: The right reverend Prelate raises an important issue on which we are at variance with the Chinese. They believe that those who flee the DPRK to save their own lives are in fact economic migrants and are therefore subject to return. I can assure the right reverend Prelate that we did indeed raise the issue of forced repatriation of refugees on numerous occasions with China, most recently at the UK-China Human Rights Dialogue in October, and we will continue to do so, including in international fora. We have also discussed the UN Commission of Inquiry report with senior Chinese officials in Beijing. It is important that we keep up pressure on this matter.

Lord Campbell of Pittenweem (LD): The imposition of sanctions is all the more significant having regard to the previous ambivalence of the Chinese Government towards North Korea. Should not these sanctions be warmly welcomed, not only here but in the White House, so that, whatever their differences, China and the United States can make common cause in the containment of North Korea?

Baroness Anelay of St Johns: The noble Lord is absolutely right. As the new Trump Administration have taken office, it is important that they and China find accord on this matter.

Baroness Cox (CB): My Lords, what is Her Majesty's Government's assessment of the security of North Korean defectors here in the United Kingdom and the potential security threat of the North Korean embassy in this country?

Baroness Anelay of St Johns: My Lords, it is a matter of fact that we have, of course, concern for all those who are in this country, whatever their nationality. We have a duty of protection in general terms. We do not provide individual protection for those who are not British citizens, as such, but we are aware that some persons are at particular risk. Because of security matters and the safety of those individuals, it would be wrong of me to go further than that.

Baroness Smith of Basildon (Lab): My Lords, the Minister will be aware of the United Nations Commission of Inquiry report which urged all democratic countries to help break the information blockade that engulfs North Korea. The all-party parliamentary group has organised a successful campaign to persuade the BBC World Service to broadcast to North Korea. Is the Minister able to tell your Lordships' House when those broadcasts will begin?

Baroness Anelay of St Johns: My Lords, I am not at present able to do so, but we strongly support the BBC's mission to bring high-quality impartial news on this matter, including, of course, providing information about the DPRK. I will see whether the BBC has come forward with any further information that I have not heard about recently.

Lord Elton (Con): My Lords, does my noble friend have any information about the number of Christians who are now incarcerated in North Korea for the sake of their religion? It is one of the countries where they are most harassed and oppressed.

Baroness Anelay of St Johns: My noble friend is right to raise the plight of Christians in North Korea. Although the constitution in the DPRK provides the right to have freedom to believe, those who practise religion outside very closely state-controlled faiths find themselves subject to appalling persecution. It is matter that we raise frequently with the North Korean Government through our embassy in Pyongyang, the United Nations and the Human Rights Council. But it is a continuing, appalling, flagrant breach of international norms.

Personal Independence Payments

Statement

3.06 pm

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, with the leave of the House, I shall repeat as a Statement an Answer given to an Urgent Question in another place by my right honourable friend the Secretary of State for Work and Pensions on personal independence payments. The Statement is as follows:

"Recent legal judgments have interpreted the assessment criteria for PIP in ways that are different from what was originally intended by the coalition Government. We are therefore now making amendments to clarify the criteria used to decide how much benefit claimants receive in order to restore the original aim of the policy, as previously agreed by Parliament, which followed extensive consultation.

I want to be clear about what this is not. This is not a policy change, nor is it intended to make new savings. I would like to reiterate my commitment that there will be no further welfare savings beyond those already legislated for. It will not result in any claimant seeing a reduction in the amount of PIP previously awarded by the DWP.

Mental health conditions and physical disabilities which lead to higher costs will continue to be supported, as has always been the case. This Government are committed to ensuring that our welfare system provides a strong safety net for those who need it. That is why we spend around £50 billion a year supporting people with disabilities and health conditions and why we are investing more in mental health than ever before, spending a record £11.4 billion a year.

Personal independence payments are part of that support and provide support towards the additional costs that disabled people face. At the core of PIP's design is the principle that support should be made according to need, rather than a certain condition, whether physical or non-physical. It is also designed to focus more support on those who are likely to have higher costs associated with their disability. PIP works better than DLA for those with mental health conditions. For example, there are more people with mental health conditions receiving the higher rates of PIP than under the old DLA system".

That concludes the Statement.

3.08 pm

Baroness Sherlock (Lab): My Lords, I thank the Minister for repeating the Statement to the House. I want to concentrate on the judgment on the mobility component of PIP. Despite what the newspapers may have reported, the tribunal ruling does not mean that anyone with mental health problems can get the higher rate of PIP. What it does mean is that assessors cannot arbitrarily ignore all mental health problems when working out whether someone is entitled to the higher rate of PIP to deal with the higher costs that they face. Despite the Minister's comments, MIND has pointed out that the Explanatory Memorandum for the original Act said that the higher rate was right if someone's mobility was,

"severely limited by the person's physical or mental condition".

If these regulations go through, it seems that someone who is blind and needs help to plan or navigate a journey could get the higher rate of PIP but someone who, for example, has autism or early-onset dementia and could not manage to plan or navigate a journey without help would not be able to get the higher rate of PIP. My question is very simple: how does that sit with the Government's commitment to parity of esteem between physical and mental health and to the Prime Minister's promise to tackle the stigma associated with mental health problems?

Lord Henley: My Lords, what the tribunal said was that there was some uncertainty in our regulations, despite the fact—I am sure the noble Baroness will remember this far better than I can, because I was not in this position at the time—that these matters were extensively debated during the passage of the Bill a year or so ago and agreed in Parliament. The tribunal said that there was uncertainty and we are trying to put that right.

The noble Baroness specifically referred to the example of people who are blind in comparison to those with psychological distress. That was a matter considered in one of the two cases that we are dealing with. Mental health conditions are more likely to fluctuate than conditions such as visual impairment or blindness, and people who cannot navigate due to a visual or cognitive impairment are more likely to have a higher level of need and therefore face higher costs. What we are seeking to do, quite simply, is amend the criteria to reinstate the distinction between those two groups, as was originally intended in the order. It is no more than that.

Baroness Thomas of Winchester (LD): My Lords, the Minister said that this is quite simple. It is not quite simple. In both recent appeals, the Upper Tribunal considered the relevant PIP descriptors most carefully. Does the Minister accept that in the second case, which dealt with mobility, the judges took into account the Government's own declaration that non-physical conditions, which surely must include "overwhelming psychological distress", under descriptors 1.b. and 1.e. in the 2013 regulations, should be given the same recognition as physical ones? Why did the Government not consult disabled organisations before bringing in these amending regulations so that they could learn the true picture of what the changes would mean?

Lord Henley: My Lords, in the time available we have not been able, as the noble Baroness will know, to consult SSAC, nor have we been able to consult a large number of different organisations; no doubt those consultations will take place. What the two tribunal decisions exposed, to go back to what I said earlier, was that there was some confusion in the original directions. We are seeking to put those back on the footing that Parliament agreed a year or so ago, so that the matter is clear and we can continue the support that is, and has been, available at a very high level—at much higher levels than it ever was available under DLA, as I made clear in the original response.

Baroness Campbell of Surbiton (CB): My Lords, have the Government conducted an impact assessment of the social isolation caused by denying enhanced-level PIP to people who would experience overwhelming psychological distress if they had to undertake a journey without someone to accompany them? If this assessment has not been done, when will it be and could it please be made available to this House?

Lord Henley: Can I again make it clear to the House that we are not in any way trying to suggest that people with any particular condition should be deprived of PIP? As the noble Baroness and the House will be aware, when we brought in PIP the arrangements were much more generous and reached far more people than DLA did in the past. It is not any specific condition that is being looked at here; people are not awarded PIP on the grounds of any specific medical condition but because of the way that particular impairment or medical condition affects their ability to live an independent life. That is what we are trying to do with PIP, or it is what we were trying to do and want to try to get back to.

Baroness Hollis of Heigham (Lab): My Lords, it is not the case that PIP is more generous than DLA. The Minister has only to consult the information produced by Motability on the number of the people losing cars to know that that is not a correct statement. Let me go back to the substance: we all know that DLA, followed by PIP, is not an income-replacement benefit but an extra-costs benefit associated with disability. What analysis have the Government made of the extra costs facing people with mental health problems, which would underpin their eligibility for the points assessment in assessing the awards for PIP? Given that there is not a clear answer, which I accept, would it not be wise and prudent to refer it to the Social Security Advisory Committee, whose job is precisely to steer the Government in areas such as this?

Lord Henley: On the noble Baroness's first point, I go back to what I originally said: there are many more claimants on PIP with mental health conditions who are claiming the mobility component. It is 29% compared to the 9% who were on DLA, which was not as good at reaching these people as PIP is. As regards her second point, it was right that, the decisions of the two tribunals having been made, and complaints having being made by the tribunals about a lack of clarity in the original directions, or words to that effect, we should correct those directions and get back to what Parliament originally intended. That is what we are trying to do and will do in these regulations.

Baroness Chisholm of Owlpen (Con): Can my noble friend the Minister give an update on what the Government are doing to remove the stigma for many people with mental health conditions, particularly those in the workplace? Does he agree that it is particularly important for people with mental health conditions to stay in work and find it quickly if they are unemployed? What is being done to support them in this way?

Lord Henley: My Lords, PIP is just part of all that the DWP and the rest of the Government are doing in this field. We believe that we are reaching more people. We are committed, as we made clear in our manifesto, to increasing the number of disabled people in work, and that includes those with mental health conditions. We are also committed to narrowing the gap between employed non-disabled people and employed disabled people, and will continue to work in that area.

Baroness Hollins (CB): The Minister may know that as many as 50% of people with learning disabilities also have mental health problems, which are often undiagnosed or overlooked. Has the department looked at how the regulations will impact on eligibility for PIP for those who have a dual diagnosis of a learning disability and mental illness?

Lord Henley: My Lords, the important thing to remember about PIP, which is what we are discussing today, is that, as I made clear in one of my earlier responses, we are looking not at specific conditions but at how those specific conditions or medical conditions affect their ability to live an independent life and then, as the noble Baroness said earlier, to make sure that the benefit goes to meet their extra costs.

Baroness Bloomfield of Hinton Waldrist (Con): Can the Minister confirm that this Government are investing more in mental health than ever before?

Lord Henley: My Lords, I can give that assurance. As I made quite clear in my earlier remarks, we have seen a growth in the support for people with disabilities and for those with mental health problems. As I said, we spend something in the region of £50 billion a year supporting people with disabilities and health conditions, and we are investing more in mental health than ever before.

Lord Clark of Windermere (Lab): My Lords, will these measures be retrospective? Will those thousands of individuals who have undergone reassessment for PIP, and are waiting for the mandatory reconsideration, be judged on the old system or the new system?

Lord Henley: All those who are in receipt of PIP will continue to receive PIP at the rates granted to them in the past. There is no question of any individual losing out.

Neighbourhood Planning Bill

Report (2nd Day)

3.19 pm

Relevant documents: 15th and 18th Reports from the Delegated Powers Committee

Amendment 35

Moved by ***Lord Kennedy of Southwark***

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

"Change of use of drinking establishments

(1) In regulation 3 of the Town and Country Planning (Use Classes) Order 1987, after paragraph (6)(o) insert—

"(p) as a drinking establishment".

(2) Before exercising his or her powers under section 41(1) of this Act, the Secretary of State must exercise the powers conferred by sections 59, 60, 61, 74 and 333(7) of the Town and Country Planning Act 1990 to remove permitted development rights relating to the change of use or demolition of "drinking establishments"."

Lord Kennedy of Southwark (Lab): My Lords, as this is the first time that I have spoken today, I refer noble Lords to my entry in the *Register of Lords' Interests*. I declare that I am a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association. I should also mention that I am a member of CAMRA and vice-chair of the All-Party Parliamentary Beer Group. I am a supporter of pubs and recognise the important role that they play at the heart of local communities, be they in our cities, towns, villages or rural areas. I am very grateful to the noble Baroness, Lady Deech, and the noble Lord, Lord Shipley, for signing up to my amendment today.

The amendment is simple in its effect. It seeks to amend the Town and Country Planning Act 1990 to provide further protection for our pubs. We have to take further action to protect our pubs, and by that I mean protecting thriving businesses, not businesses that have failed. There are a number of problems that need to be addressed. First, I want to pay tribute to CAMRA, which, since its formation in 1971, has stood up for the enjoyment of beer, responsible drinking, the pint, and pubs at the heart of our community. It is without doubt one of the most successful consumer campaign organisations in the UK.

Permitted development rights, as noble Lords will be aware, removed the requirement for a building owner to seek planning permission before making changes to a property. This includes change of use or even demolition. The permitted development rights that we are talking about here allow pubs to be changed to retail or to temporary office use without the need to secure planning permission. The effect is that the people in the local community are prevented from having a say over their local pub. We should be clear: these are small businesses, not failing businesses, but decisions are taken and the community loses its pub, having no say whatever. That cannot be right.

Pubs are a much-loved part of British life. They bring people together to meet, socialise, watch football or other sports, and enjoy live music or conversation with family and friends. I recall going to the event in this House organised by the Royal Voluntary Service some years ago to speak to some of the volunteers there. They were getting people out of their homes to potter down to the local pub to meet their friends and keep up their friendships. That was an important part of keeping them involved in the local community.

Pubs are also much loved by tourists. Both my brothers and my father have been black taxi drivers in London, and they could tell you about the number of tourists who arrive in London, get in the back of a taxi and want to visit a traditional pub, as well as see some of the magnificent sights that we have here. It is not uncommon for a Prime Minister to take a head of state down to the Plough in Cadsden for a pint. But permitted development rights, as they are presently in force, are estimated to contribute to the closure of 21 pubs a week.

We, of course, have the assets of community value scheme, which was introduced by the coalition Government in the last Parliament. It has proved to be a popular initiative and it has led to the removal of the permitted development rights for listed pubs. There are, however, issues and unintended consequences associated with the ACV scheme, which I will spend a little time talking about. There is a burden of time and cost placed on local authorities, community groups and pub landlords and owners. There are also a few instances where local authorities, for whatever reason, are not keen to list pubs under this scheme. All sorts of reasons are given, including that the authority is fearful of costly appeals. There have also been problems where some landlords or owners have struggled to raise funds for works, as the listing has proved a deterrent to some lenders. These are clearly an unintended consequence, but they are a consequence nevertheless.

The amendment before us today will lead to fewer pubs needing to be registered under the scheme. It will put them on a level footing with other businesses so that a developer looking to convert a pub, for whatever reason, would have to go through the normal planning application process. It is quite possible, even likely, that the application will be approved, but my amendment would give the local community a proper say in the sort of development it wants in its area and stop local assets being lost for ever with local people having no say. Surely that is something we should all support. I beg to move.

Lord Scriven (LD): My Lords, I will speak to Amendment 39, to which I added my name. I also support the thrust of what the noble Lord, Lord Kennedy, has just said. As it is the first time I have spoken today, I will place on record my interests in the register as a member of Sheffield City Council.

In Committee, the Minister generously asked for examples of where the asset of community value scheme was not working well in particular authorities. He will be aware that I contacted CAMRA in Sheffield to ask whether there were any incidents of such difficulties with the scheme in regard to pubs. I was quite surprised at the amount of information CAMRA gave me—which I am sure the Minister has seen. It became quite clear from reading about what was going on that this is not isolated to Sheffield, which merely exemplifies what is happening in many communities across the country.

This is a burden on communities. It is a David and Goliath fight where the community must fight sometimes a large local authority to prove that an asset is of community value. We talked many times in Committee about the difference between pubs and other commercial operations. It is about not just the economics but also the community and social value that a pub has in binding communities together.

I have come to the view that the asset of community value is not enough in itself to protect those pubs, particularly given the time needed and the burden put on community organisations to save a pub. It is an unbalanced fight between the giant and the small community organisation. For that reason, pubs should have permitted development rights taken away. As the noble Lord, Lord Kennedy, said, that would give the community an equal voice in the planning process. It does not necessarily mean that a pub will not be converted to a particular use if it goes through the planning process, but it gives a statutory right to every single member of the community, without cost, to have a say within the planning process, and to be able to explain why a particular pub should or should not be changed and the effect that that will have on the community and the setting of that pub. For that reason I have come to the conclusion that we need to take the permitted development rights away from pubs if they are changing specific use or will be demolished and put them properly and correctly within the framework of the planning process.

Lord Bilimoria (CB): My Lords, I must declare my various interests in this area: as the founder and chairman of Cobra Beer; as the chairman of the Cobra Beer Partnership Ltd, a joint venture with Molson Coors, one of the largest brewers in the world and the largest brewer in Britain; and as an officer of the most popular and largest all-party parliamentary group—the All-Party Parliamentary Beer Group.

I came to this country as a 19 year-old student from India and remember my first evening here, staying at the Indian YMCA in Fitzroy Square in London. Opposite was the White Horse pub. That was my induction to Britain. Pubs are a way of life in this country. I have been lobbied and lobbied by various organisations, including two of the most prominent associations in our industry. The British Beer and Pub Association, or BBPA, represents companies that between them own 20,000 pubs and brew more than 90% of the beer sold in the UK. The ownership ranges from UK plcs, large companies such as my joint venture partner Molson Coors, privately owned companies, independent family brewers, microbrewers and divisions of international brewers. The association is campaigning to support a thriving brewing and pub industry in the UK. After all, pubs are at the heart of our community.

3.30 pm

The amendments in this group are important. When one wishes to recategorise a pub from an A4 outlet, a drinking establishment, planning permission to change it to an A3 outlet—that is, one serving food and drink—is required. Nowadays pubs very much rely on food for their business. In June we are sponsoring London Food Month. Britain was the laughing stock of the world regarding food when I came here in the 1980s; today, London is the food capital of the world and Britain is famous for its range of cuisines. Our pubs are phenomenally good at providing excellent value-for-money food. These amendments are important because pubs are vital to the community, and existing planning rules require flexibility to allow pubs change of use.

Pubs increasingly focus on the sale of food and serve more than 1 billion meals a year. While they are categorised as drinking establishments and food-and-drink premises, there are no fixed definitions. Pubs, wine bars and other drinking establishments are permitted to change from A4 to A3 without a planning application. If that right were removed from pubs, there is a real concern that a pub could be penalised and prevented from increasing its food offering. The local authority could instead insist that the pub needed to apply for a change of use if its food turnover reached a certain threshold. This would lead to disputes, costs and complexity, and increased time taken by the local authority.

Drinking establishments are also not just traditional pubs but sometimes wine bars, microbreweries and other establishments, such as those for casual dining. We need to retain flexibility in the distinction between pubs, bars and restaurants. They must continue to have the right to convert to A3 in appropriate circumstances without planning permission in order to prevent distortion of the market.

The impact of the amendment on property values could be significant. The BBPA suggests that there should be full consultation and an accompanying impact assessment. Does the Minister agree?

Then there is the whole issue of the asset of community value process. ACVs were introduced to add protection to pubs and other buildings. A building that has ACV status is already subject to the same planning protections outlined in the amendment, but the vast majority of existing ACVs have been placed on pubs. While offering protection, they are complex and the amendment provides protection to some pubs that are not necessarily an asset and are, in reality, barely viable. Some pubs are historic, and the BBPA believes that pubs should be designated ACVs only if they have a future and are supported by the local community.

As regards minor planning changes, the amendment relates only to planning permission for change of use and demolition. It is imperative that this remains the case and that planning permission under permitted development rights is not required for minor changes to properties because it would deter investment.

To conclude, this is part of the wider support required for the pub sector. These planning changes are not the complete solution to this situation and pubs are closing down every year. Pubs have the third-highest excise duty rates in the EU for their core product, beer—rates many times higher than in Germany, for example. Pubs are disproportionately penalised by business rates, a topical subject at the moment. Compared to other sectors, pubs overpay by half a billion pounds per year on a turnover basis. The sector has huge regulatory

[Lord Bilimoria]
burdens, and a change in the planning system should be considered as part of a broader package of support for the industry.

In 2013, CAMRA, the Campaign for Real Ale, conducted a survey of council planning officers and found significant dissatisfaction with current planning protections for pubs: 65% of respondents were not satisfied that existing planning regulations gave sufficient protection to public houses from change of use or demolition; 65% of respondents supported a change in planning regulations to require planning permission to be in place before a public house could be demolished; and 67% of respondents supported a change in planning regulations to ensure that the conversion of a public house to any other use would require planning permission.

In 2015, CAMRA did a consumer poll that showed strong public support for better planning protection for pubs: 68% of respondents supported planning permission being required to demolish a pub and 69% of respondents supported planning permission being required to change the use from a pub to a shop. If we had had a supermajority clause in the European Union referendum, those figures would have passed all the thresholds. CAMRA urges that local people be empowered to keep valued community pubs open. As a result of these amendments, councils would be able to deliver planning policies designed to support the retention of valued pubs and reduce the burden of assets of community value on communities, councils and businesses. I wholeheartedly support these amendments. They protect British pubs, which are a valued part of our wonderful country.

The Archbishop of York: My Lords, Amendments 35 and 39 were debated extensively in the other place. They relate to planning protection for pubs. At the moment, pubs are subject to permitted development rights, meaning that they can be developed for alternative commercial use—for example, they can be turned into offices or shops—without the need for planning permission. The only exception is where a pub has been designated or recommended as an asset of community value—an ACV. More than 1,750 pubs have been given ACV status but, like the noble Lord who moved Amendment 35, I argue that the process is too cumbersome. As Roberta Blackman-Woods put it on Report in the other place:

"Although pubs can be protected if they are designated an asset of community value, the process for that can be very cumbersome. I believe it is much more appropriate to return the decision on whether a pub can be demolished or converted to the local community, where it belongs, rather than dealing with it through permitted development".—[*Official Report*, Commons, 13/12/16; cols. 737-8.]

Unless pubs are designated or recommended as an asset of community value, they are at risk of closure in a difficult market for pubs and landlords. Pubs in high-value areas are highly sought after for conversion, even if they are profitable. The amendments would remove pubs from permitted development rights, meaning that planning permission would be needed for conversion, regardless of ACV status. It is argued that this would help local communities protect profitable pubs as the local council will be able to refuse an application for conversion where the pub is profitable and viable. Given that pubs are considered an important aspect of a vibrant community life, and given the Church of England's concern for that community life being vibrant, these amendments should be supported. I have no investment in any pub.

Lord Hodgson of Astley Abbotts (Con): My Lords, pubs, as we realise, arouse strong emotions. We had a lengthy debate on this topic in Committee in the Moses Room. I do not want to rerun all the remarks that I laid out then. I remind the House that until three years ago I was a non-executive director of a company that operated brewers and about 2,000 pubs. I am outside the quarantine period, so that is no longer in my entry in the *Register of Lords' Interests*.

I begin from what I hope is a shared position: we all want to keep pubs open wherever possible. The question posed by this amendment is at root this: will pubs be kept open by this additional legislation? I am afraid that for me the answer is negative. Pubs are closing because people use them less, and people are using them less because of changing leisure habits. Pubs are closing because people can buy the beer far more cheaply in the supermarket and then drink at home. Pubs are closing because of increasing beer duty and council tax and because of the introduction of the minimum wage, the living wage, the smoking ban, the drink-driving ban, new licensing requirements, and new health and safety legislation. Collectively, these have all combined to squeeze the general profitability of pubs to a point where many can no longer provide an adequate return to long-suffering and hard-working landlords.

Legislation cannot make a bad landlord into a good one. Legislation will not enlarge the curtilage, or land area, of a pub to enable new kitchen facilities or new parking areas to be constructed.

Lord Porter of Spalding (Con): Will my noble friend give way? He said that no pubs are closing because of the changes to permitted development rights. I do not think anyone disputes that a number of pubs will close because they are not used by the communities that they are situated in, but can he prove that no viable pubs have been turned into supermarkets?

Lord Hodgson of Astley Abbotts: I certainly cannot. There are 37,000 pubs in the country and I am not able to stand here and say that the 37,000 pubs have been operated completely to the highest standards or that people have not tried to run them down. I shall return to the point about how there is already adequate protection for the community if it chooses to use it. One of the ways to improve a pub is to improve your kitchen facilities or enlarge your car park, but some of these pubs do not have the land area or curtilage to be able to do that.

It is not as though there is not already an opportunity for individual communities, using the asset of community value—the ACV facility—to apply for it to be listed. The noble Lord, Lord Kennedy, suggested that this was not an adequate remedy and that in some cases local authorities were reluctant to get involved for a series of reasons. I am sure there have seen cases like that, which is why I shall come in a minute to the

question of one of the remedies for this. But equally, it is fair to say there are cases where local authorities have blanket-classified a whole series of pubs in their area—the lot—and that is also not what the ACV arrangements were designed to do.

Am I suggesting that every pub is being run scrupulously? Of course not: there are thousands of them and there will be outliers, on both sides of the case, in every community and every part of the country. But to introduce new legislation on the basis of a small number of cases—and it is a small number of cases, some of them anecdotal—is in my view a mistake. What the industry needs above all is more investment, not less, and nothing is more likely to put off potential investors than restrictions on how they can, in the end, realise their investment.

It has somehow gained credence that the groups at which these amendments are aimed are the allegedly rapacious pubcos and integrated brewers. If that is the aim, I have to tell the House that the target is being missed. The losers will be the independent operators, for example the many thousands of mum and dad operators. There are probably 20,000 couples who have worked long and hard, maybe after inheriting the pub from parents, and who now wish to sell up and retire. But because of restrictions like these, they find the sale price of the pub—also their home and their only asset—reduced in price drastically and maybe even unsaleable pending the ACV negotiations. If it is felt that the ACV process is not working well, I agree that it should be reviewed—but reviewed in the round so that the cases that the noble Lord, Lord Kennedy, refers to and the other cases where there have been block listings can be looked at and we can see how the balance of the ACV operation has been proved to work.

I urge those who support the amendment to be careful what they wish for. Legislation about the pub industry in the past has all too frequently led to some very unhappy unintended consequences. It is worth remembering that the emergence of the pubcos—companies that only own pubs, buy in all their beer and alcoholic drinks and are most disliked by CAMRA—came about only because of legislative action. The beer orders had the intent of opening up the market by reducing the power of the large brewers to dictate which beers were produced, and which owned and controlled the vast majority of the pubs.

Forced divestment of pubs did not lead to the anticipated happy outcome. It led instead to the emergence of what were essentially specialist property companies, all too often highly geared, with all that that implied for reinvestment in the pub industry. In my view, a similar unintended consequence may result if my noble friend were minded to accept this amendment, or the noble Lord was minded to put it to the vote and won the subsequent Division. My reason is this: because of the highly competitive nature of the market for the sale of alcoholic drinks and other changes in our socioeconomic life, pubs have increasingly turned to food, as a means of improving their profitability. Increasingly, they are becoming, in effect, restaurants. If I were an independent owner of a pub, faced with yet further changes, I would consider what the balance of my business was like; I would boost my food offering and apply for a change of use from my current A4—drinking establishment—to A3—restaurant/café. As a result the loss of pubs would accelerate, not slow down.

There is no evidence of widespread running down of pubs to accelerate closure. Where it happens the ACV procedure is available for the community to use. A handful of cases do not justify the imposition of additional restrictions on the whole industry. Hard cases make bad law—

Lord Bilimoria: I thank the noble Lord for giving way. I made the point about pubs increasingly offering food. That is happening—it is part of their offering, along with the drink. But the noble Lord's argument seems to imply that he is not for the British pub industry and British pubs. The BBPA, which represents 20,000 pubs in this country—the majority—and CAMRA, which represents a huge part of our beer industry, feel that these amendments are good. The noble Lord has not convinced me, for a start.

Lord Hodgson of Astley Abbotts: I hear what the noble Lord says. Actually, I am not sure that the British Beer and Pub Association does approve of these amendments. It is concerned at further restrictions being placed on the operation of pubs which will deter investment. What the British Beer and Pub Association favours, with which I entirely agree, is a review of the operation of the asset of community value system in the round. We are taking a sledgehammer to crack a very small nut. The danger is that we will miss the nut and damage the industry.

Lord Berkeley (Lab): My Lords, I am very interested to hear the noble Lord, Lord Hodgson, for once sticking up for the couples who run pubs. We have been listening for the past two or three years to him, virtually single-handed, opposing the ACV system that both the Labour Party and the Government supported. There are still problems with it, as we know; we need not get into it. It was, however, good to hear him stick up for the small pub couples. I agree with the noble Lord, Lord Bilimoria, that the noble Lord, Lord Hodgson, is wrong. Pubs are closing. They are closing and having change of use when the community does not want them. It is very easy to stereotype. I live in Cornwall, in a little village by the sea; if the two pubs there were to close it would be a disaster for the community, but the owners would make much more money selling them as desirable second homes. The same applies in London, because the property prices are so high. Many owners would rather sell their pubs and turn them in to luxury flats or something rather than keep them going, especially when the business rates issue is coming to the fore and there is fear of an enormous growth in the rates they will have to pay.

It is perfectly reasonable and very desirable that these amendments are supported. Pubs, as other noble Lords have said, are an essential part of the community. There have been examples where people have walked down the road and found that their pub suddenly has a barrier around it and is closed for good. They did not know that was going to happen as it was all done in secret.

Lord Hodgson of Astley Abbotts: Just to be clear, I support keeping pubs open and I support people's property rights.

The Countess of Mar (CB): My Lords, I am sorry to interrupt the noble Lord, but I remind him that this is Report. If he has a question for the noble Lord, Lord Berkeley, would he ask it briefly?

Lord Hodgson of Astley Abbotts: My question is: is the noble Lord now questioning property rights for individuals? If someone has an asset, should they not be allowed to dispose of it?

Lord Berkeley: There are many types of property in this country that have different constraints on them, and from my point of view pubs should be one of them because they are a very important part of the community. These are reasonable amendments and I fully support them.

Lord Swinfen (Con): My Lords, I spoke briefly on this in Committee and I will not weary your Lordships by repeating what I said then. I shall say simply that I support the amendment, and if there is a Division I will vote in favour of it.

Lord Tope (LD): My Lords, I declare my interest as a vice-president of the Local Government Association. I should perhaps also declare a non-interest: I have never been involved in any way in running a pub but am simply an occasional and perhaps too frequent consumer.

I do not think any of us here are suggesting that all pubs should be preserved in aspic regardless of circumstances. Of course pubs become unviable for all sorts of reasons, such as different social trends or changes in the local neighbourhood. There are all sorts of reasons why a pub genuinely becomes no longer viable. However, there is a big difference between "not viable" and "not as profitable as it could be". In other words, a building can certainly be used more profitably as something other than a pub; the site on which a pub stands could certainly be developed more profitably than by being retained as a pub. That is the difference, but no one here is suggesting that pubs should be retained regardless of local circumstances.

The noble Lord, Lord Hodgson, referred several times to new, additional legislation. I suppose, since we are considering legislation, it is in a sense new legislation, but actually the effect of what is being proposed is simply that the consideration of any demolition or development of a public house should go through the normal planning process. I am not sure that strictly speaking that is what I would have understood by "new legislation". What we are saying is that the local community should have its opportunity to give voice to its views on any proposed development of a public house in the normal way through the normal planning permission. The position at the moment is that through permitted development rights the owner or someone else has the right to demolish or develop the pub regardless of the local planning authority or the local community's views. That is what is objectionable and it is one of the reasons, though not by any means the only one, why so many pubs are disappearing—because there are more profitable uses for the building and/or the site. That is what is causing so much concern.

The noble Lord, Lord Hodgson, is probably right that some local authorities have possibly used the device of assets for community value rather too liberally or generously. Maybe so, but there is a good reason why they are doing that: it is the only way that they can avoid the problems with the permitted development rights. I think "assets of community value" was an excellent measure, introduced as it was by the coalition Government through the Localism Act—"localism", incidentally, is a word that we do not hear very much these days—but it was put in there for rather different purposes than a blanket position to refer to all pubs in a particular local authority area regardless of circumstances.

All that is really being suggested here is not strictly new legislation but rather that we revert to the situation that used to apply that, if you wish to make appropriate changes to a building—in this case a public house—whether by demolition or redevelopment of the site, you apply to the local planning authority. It goes through the normal planning process; the local community has its opportunity to make representations and the planning applicant has its opportunity to make representations and the elected planning authority makes the decision. That is what is being proposed here—not that all pubs should be preserved regardless of circumstances or, alternatively, that all pub site owners should have the right to develop regardless. I very much support the amendments and I hope that they will be put to the vote. I hope, of course, that that vote will be successful, and I hope then that the Government will consider very seriously what seems to be—we may be about to prove it—a majority view on all sides of this House, which is most certainly the majority view in most if not all communities.

Lord Framlingham (Con): I spoke very briefly in Committee in support of this amendment, and I would like to do the same again now. I have no shares in pubs but, like many Members of your Lordships' House, I have made a considerable investment in a number of pubs over the years and continue to do so.

I understand the points that the noble Lord, Lord Hodgson, makes in an accountancy sense and a clinical sense. Of course, they are true. He talked about people drinking at home, which people are doing more of, as we know—but this is not about people drinking at home; it is about people drinking with other people, in the community, and all that brings to the community. It is not just about drinking anymore. I think of my local pub, which has wi-fi and excellent food—not just fish and chips on Friday, although it does that very well. It has an art gallery behind it and all sorts of things, including pub quizzes, of course. It is a major hub in the community and would be hugely missed.

I am sure that in your Lordships' House we all have memories of pubs and pubs we currently use. They are a uniquely British institution. We are losing them too fast anyway and surely we should do anything we can to hang on to those that we have. There are good reasons why we might have some difficulties in keeping

them open, but they are a uniquely British institution and this amendment is a very sensible one. I hope that the Minister feels minded to accept it.

Lord Shipley (LD): My Lords, I agree very much with what the noble Lord, Lord Framlingham, has just said. There is a big problem. The facts are these: more than 20 pubs are closing every week, and 2,000 pubs have been listed as assets of community value, but around another 40,000 have not been listed and, currently, have permitted development rights applied to them. As the London Borough of Wandsworth has demonstrated, it is possible for local authorities to use Article 4 directives on pubs, but that is a very complex process—and certainly in this respect far too complex for most areas.

I puzzled over the question of whether, if you have 2,000 pubs listed as assets of community value, there is actually a problem. If 2,000 community organisations can make a proposal for their pub to be listed, the process seems to work fairly well. However, there is another way of looking at that, which is the view that I take, which is that if communities feel that it is necessary to list 2,000 pubs as assets of community value, there is clearly a problem that needs to be solved, because 2,000 is a very large number. Of course, we have now experienced the fact that, despite 2,000 pubs being registered, large numbers have not been listed and have been lost. The solution is simply a minor amendment to the law to end permitted development rights and to require that any proposed change to a pub should secure planning permission. It is a simple remedy.

4 pm

After Committee, when we had lengthy debates about this, I saw in my local newspaper in Newcastle reference to a research project. It had been carried out by Northumbria University and funded by the British Academy. The research, undertaken by Professor Ignazio Cabras and Dr Matthew Mount, showed that there was stronger community cohesion in parishes with pubs. They examined 284 parishes and demonstrated that, where there was a pub, there were more community events and clubs than in parishes without a pub—even in parishes with a sports or village hall. The very existence of a pub promoted community cohesion. Their conclusion was that we needed legislation to prevent unnecessary closures. That has convinced me that we need to do something to address this problem. Removing permitted development rights seems the most effective way. Many pubs may still close, as we have heard, but some will be enabled to stay open. That should be our objective.

Lord Marlesford (Con): My Lords, I support the amendment. Of course, pubs have to be closed where there is no business. All we are seeking is a filter so that there is an opportunity for the local community to make representations and consider it seriously. Planning laws cover so many—often very minor—things. It is not asking a lot that, if there were a request for a pub to be closed, at least a planning application would have to be made. This would mean that the local parish council—and I declare an interest as the chairman of my parish council—would have the opportunity to gather the views of the community. They could make their point to the planning authority—the district council—which may go the other way.

There are two reasons why pubs close. The main one is that there is not the business to keep them going. The other is that people buy pubs in order to convert them to houses. I know cases in Suffolk where that has happened. They buy them as going concerns and then, quite callously, seek planning permission to close them.

The noble Lord, Lord Kennedy, has a strong point and I hope the Minister will agree that, at least, closures should be subject to a planning application. I think it is pretty silly to have to get planning permission to put up a garden fence more than six feet high and eight feet from the road. All one is asking here is for the community to have the opportunity to express a voice.

Baroness Deech (CB): My Lords, my name is attached to this amendment. I have no interest to declare in every sense of the word. I became interested because the area where I live has seen a great deal of development. Houses have been pulled down; big new estates have arrived. The very few local pubs have served as stabilising factors and community centres. They are places where people can meet to get to know each other and, in particular, they act as a sort of verbal noticeboard to find out what is going on in the community. Communities would be much impoverished were these pubs to be closed down more readily.

All this amendment is asking is that pubs should not be treated more casually than other demolitions and changes of use. There can be no harm in this. I hope that the Government will see the truth of it.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank noble Lords who have participated in this debate, in which there has been a great deal of passion and much agreement. There is not anything that divides us on the basic tenet that we want to protect pubs. Where there is a difference is on the best way of doing that. There is no disagreement about the diagnosis, only about the remedy. One or two noble Lords were, perhaps, in error—or have expressed themselves ambiguously—on one point. If you are converting a pub to residential accommodation, you need planning permission; that is already the case and this would not alter that.

I thank the noble Lords, Lord Shipley, Lord Tope, Lord Scriven, and Lord Kennedy, and the noble Baroness, Lady Deech, for speaking so effectively to the amendments. I reaffirm that the Government do recognise the importance that local communities place on valued community pubs. I have experience of this because, in another life, I was co-chair of the All-Party Beer and Pub Group in the National Assembly for Wales— one of my more pleasant jobs there—and met regularly with CAMRA and the British Beer and Pub Association. I was pleased to set out in Committee the range of support that we are providing to some communities to enable them to purchase their local pubs and to enable other pubs to diversify. I take the point made by the

[Lord Bourne of Aberystwyth]
noble Lord, Lord Bilimoria, that this is a package of arrangements. It is not a silver bullet; we have to look at the problem more holistically.

Our package of fiscal measures—scrapping the beer and alcohol duty escalators and freezing beer duty at Budget 2016—has supported all pubs. These measures have made a considerable difference and have been widely welcomed across the House and in communities up and down the country. Some noble Lords have made the point that some pubs are not viable and no amendment we pass will make them so. There are others which we should seek to protect. There are things we can do today, but whatever we do will ameliorate and help the situation, not solve it with a silver bullet.

As I said I would in Committee, I have continued to give consideration to the issue of pubs and assets of community value, to try to do something that will address this across a range of pressure points and issues. I have met with the Campaign for Real Ale—an excellent organisation for which I have great respect—and the British Beer and Pub Association. I have to say to the noble Lord, Lord Bilimoria, that it was clear from our meeting that they are much more of the view that we should have a review than that we should press this amendment. I was intent on listening to their views to see how the current arrangements work.

I am very keen to respond to the concerns that have been raised today, and it is clear that a delicate balance needs to be struck. Indeed, the evidence put forward by the Campaign for Real Ale does not necessarily point to permitted development rights as having the most significant impact on pubs. I am keen that we should look at this issue and the evidence available to us. It is clear from these conversations that the majority of pubs that change use do so following local consideration of a planning application in relation to residential development rights—or, in this case, non-rights.

Figures provided by CAMRA estimate that 90% of pubs changing use do require planning permission. Where this is the case, for example for the change of use to residential, there are strong policy protections for pubs. Paragraph 70 of the *National Planning Policy Framework* requires local planning authorities to deliver the social, recreational and cultural facilities and services that the community needs, including pubs. That is why it is important for local planning authorities to have relevant, up-to-date, local policies in place to support their decision-making.

In respect of the change of use or demolition of pubs under permitted development rights, as noble Lords will know, the current arrangements already provide protections for pubs that are valued by the community. As has been indicated in this debate, permitted development rights for change of use or demolition are removed from those pubs that are listed as an asset of community value for the period of the listing. I have had a look at the process of nominating as an asset of community value. It is not complicated and there is no fee attached to it. Communities have responded positively, and more than 4,000 assets have now been listed, of which over half are pubs; a "very large number" as the noble Lord, Lord Shipley, said.

That is a sign of success, not failure, but I agree that we have to see how we can do better. My starting point would be to look at the impediments to other pubs being listed as assets of community value. For example, it may be that some local authorities are not looking at this in the way they should. I thank the noble Lord, Lord Scriven, for coming up with some evidence, which we have certainly had a look at. That, together with other evidence I have heard, has persuaded me that we do need to consider the issue.

While we recognise the intent of the amendments, we cannot support them as such. However, that is not to say that there is no room for improvement. Clearly, there is. I believe that there is scope for improvement in the assets of community value area. I am pleased therefore to be able to offer—as an alternative to pushing this to a vote—that the Government will undertake an open and transparent review of the current arrangements in respect of assets of community value and the planning regime for pubs, including looking at permitted development rights. The review would start no later than straight after the local elections, with a clear commitment to report within six months—that is, to come back in the autumn with a view to taking action on whatever the review throws up.

We all want to protect assets of community value. The review would therefore look at the process of nominating and listing pubs as assets of community value—at how communities can better be supported to take advantage of the community right to bid and have a say in the future of their pubs, while appropriately safeguarding the rights of owners. We would invite detailed comments from communities, pub owners, local authorities and interested parties on where changes, improved guidance and other support would be helpful. This could include looking at whether there was a case for changing the planning rules—that would be part of the review.

For example, from my discussions it is clear that across the country there are inconsistencies of approach. The evidence brought forward by the noble Lord, Lord Scriven, demonstrated that and, of course, there are other examples of local authorities not applying the rules in the way they should. While decisions on whether to list a pub as an asset of community value are rightly matters for individual local authorities, we can look at whether further guidance for communities and local authorities would be helpful. In one case I heard about, a local authority did not want to list a pub because it served alcohol—which seems rather to miss the point of what we are seeking to do. So I would be keen to put a spotlight on cases like that and make sure that we get some sense into the system.

Alongside this, the review would consider the impact of the removal of permitted development rights for change of use—including the impact on owners. I would also be keen to look at issues around the raising of finance, which the noble Lord, Lord Kennedy, and others have raised. It is inconsistent; some financing bodies do not regard listing as an impediment while others do. The objective is to ensure we get best practice here. The review would enable us to look at this on a fairly short timescale and on a much broader front. This is not just about planning issues; it is broader than that. It is also about the assets of community

value approach, which does work extremely well in many parts of the country. In the borough of the noble Lord, Lord Kennedy—indeed, on his doorstep—the Ivy House, where he is, perhaps, an occasional rather than a frequent imbiber, appears to be working very successfully. So there are examples that we can use to inform this review of where the approach is working extremely successfully.

I would be content to put on the face of the Bill that we will have a statutory review within the timescale I have indicated. I do not think I can be fairer than that. This would look at things across the range and come up with evidence not just on the narrow area of planning permission but around the assets of community value scheme—which all parties have signed up to as a valuable process—to see if we can find a way forward.

I have been pleased to engage with noble Lords on these issues. We have had some good discussions and we share the aim of doing something positive. However, I believe that a review within this tight timescale would be the answer. I therefore ask the noble Lord and other noble Lords not to press their amendments.

Lord Kennedy of Southwark: My Lords, I thank all noble Lords who have spoken in this debate. I am very grateful to them all. I agree very much with the comments of the noble Lord, Lord Scriven. His analysis of the problems experienced in Sheffield was very telling and highlighted that action needs to be taken. The noble Lord, Lord Bilimoria, was right when he spoke about the variety of food and drinks sold in pubs. I live in Lewisham and the pubs there have different offerings depending on their clientele. The amendment simply asks that those who want to convert pubs apply for planning permission, and I am delighted to have the noble Lord's support.

The most reverend Primate the Archbishop of York spoke about the need to protect profitable pubs and I very much concur with what he said. My noble friend Lord Berkeley made an important point about the value of pubs to the community, and he mentioned in particular Cornwall, where he lives. The noble Lord, Lord Tope, highlighted the loss of local pubs by the conversion of an asset through permitted development and not because they are failing businesses. I am also very grateful to have the support of the noble Lord, Swinfen. I thank, too, the noble Lord, Lord Framlingham, for his supportive remarks. Like him, I have no shares in pubs, although I have spent quite a lot of money in them over the years.

I return to my earlier remarks about the visit to the House by representatives of the Royal Voluntary Service. They talked about how they would take people to a pub not just to have a drink but to meet their friends and family. They emphasised how that was an important part of getting people involved in their community.

The noble Lord, Lord Marlesford, was right: this is a modest proposal which simply allows the community to have a voice. The noble Baroness, Lady Deech, made an important point about the need to show that pubs are treated no less favourably or more casually than any other business.

That brings me to the comments of the noble Lord, Lord Hodgson of Astley Abbotts, with whom I did not agree. It was an interesting intervention but it did not address the substance of my amendment in any way. This amendment is not about propping up failing businesses. If a business is failing and cannot pay its way, meet its liabilities and return a modest profit, it will close. Nothing in my amendment seeks to change that, and it would have no effect whatever on the type of issue that the noble Lord raised. Not one word of my amendment would keep open a pub or business that was failing and not meeting its liabilities. It would simply close a loophole and ensure that, specifically on change of use, a planning application would have to be made and the local community would get to have its say. It would do nothing more and nothing less, and really should cause the Government no problems whatever.

I thank the noble Lord, Lord Bourne of Aberystwyth, for his remarks. I have great respect for him. He is an effective Minister and an effective operator in this House. He deals with all noble Lords with great skill and courtesy, as has been evident as he has taken the Bill through this House, and I am very grateful to him, as we all are. I have considered all the issues in today's debate and in Grand Committee very carefully. I do not do anything by halves but clearly we are at the point of calling time on this debate, and I now want to test the opinion of the House.

4.17 pm

Division on Amendment 35

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Amendment 35 agreed.

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4.36 pm

Amendment 36 not moved.

Amendment 37 had been withdrawn from the Marshalled List.

Amendment 38

Moved by ***Baroness Gardner of Parkes***

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

"Retrospective planning permission

(1) Where there has been a breach of planning control, as defined under section 171A of the Town and Country Planning Act 1990 ("the 1990 Act"), the person or body who has caused the breach must make a retrospective planning application for planning permission under section 73A of the 1990 Act (planning permission for development already carried out).

(2) In respect of a retrospective planning application, the person or body who has caused the breach of planning control is liable for the payment of fees or charges to the local planning authority in respect of the costs incurred in carrying out the functions connected with the retrospective planning application.

(3) The person or body who has caused the breach of planning control is liable for the payment of a significant additional charge, connected to the retrospective nature of the planning application, in addition to the fees and charges the person or body is liable for under subsection (2).

(4) In carrying out the functions connected with a retrospective planning application, the local planning authority must consult the people residing in the local area to which the retrospective planning application relates."

Baroness Gardner of Parkes (Con): My Lords, I have brought this amendment back in exactly the same form it had in Committee because I thought the comments the Minister made then really deserved to be re-examined. This is an important issue that ordinary people care about very much. Everyone is very unhappy to find suddenly that something has been given retrospective permission without them having any idea that it was even up for reconsideration.

As the Minister said on that day in Committee:

"How we deal with unauthorised development is an important issue that concerns many people".

I think that is right. He also said:

"It is important to note that retrospective planning applications must be determined in exactly the same way as any other application, that is, in accordance with the development plan unless material considerations indicate otherwise".—[*Official Report*, 6/2/17; col. GC 346.]

He then referred to what the noble Lord, Lord Beecham, said about this, which was also interesting. The Minister mentioned that if somebody has deliberately concealed the fact that they are doing development, as in the famous haystack case, they can be required to demolish the property.

What I found most disappointing in what the Minister said was that the local authority concerned does have an obligation to consult people—I put the part about consultation in my amendment because local authorities are not doing so. Certainly, in the cases where I have been affected by retrospective planning permission, the first thing I have known about it is when I received a note saying, "We have granted planning permission" for whatever disastrous thing it was near me. I have met so many other people who have been in the same situation. If there is an obligation to consult the same people whom you would have consulted before, why is it not being done for retrospective permission? It all smells a little bit. Is this because someone is trying to slip something through retrospectively and feels that they will get away without any consultation or having to attach any conditions? It bears looking at again.

I think it was the noble Lord, Lord Shipley, who mentioned the serving of enforcement notices. The Minister certainly picked up the point about enforcement proceedings, but I am not suggesting going any further on those issues.

I must reiterate that my interest is declared in the register; I should perhaps have said that at the beginning.

The Minister went on to say, regarding enforcement, that,

"there is already a double charge".—[*Official Report*, 6/2/17; col. GC 347.]

[Baroness Gardner of Parkes]
I had not appreciated that there was already a double charge, but apparently that is the case only if you have an enforcement notice. There is no extra charge if you have simply not applied and come back to get your permission, and the local authority has not notified those people who should be consulted. Is that because there is corruption, or is it laziness on their part? It is very important to have some way of ensuring that—it really would be good. The Minister said that it would not be helpful to delay effective enforcement action. All of these things are true, but why are they not adhering to the letter of the law as it is? Why are ordinary people suffering? They are finding that, instead of being able to insist that some reasonable condition that would suit everyone in the locality be included in the planning consent, and the planning authority would consider whether it was a justifiable condition to attach, they are simply not being consulted and are getting word after it is all over and done with.

I suggested a penalty fee in that proposal because planning officers to whom I have spoken have said to me that, at the moment, there is no disincentive whatever to going retrospectively for permission. You can be brave and just have a go and you have nothing to lose because you have no disadvantage: if you find out that you have not got permission, you go for it then and it does not cost anything more; you might have saved yourself a lot of time, trouble and bother, and you have just gone ahead with what you wanted. On the idea of a penalty fee, the Minister said:

"It is a matter which I know previous Governments have considered and to some extent grappled with, but in the interests of fairness have decided not to take forward".—[*Official Report*, 6/2/17; col. GC 347.]

In speaking to other amendments in Committee, the Minister said that he would be looking very seriously at various things for secondary regulation, as to what should or should not be regulated and what should or should not be considered. However, I believe that this is the sort of instance that should be looked into. The noble Lord, Lord Shipley, has said to me that this is more complicated than I imagine. I am sure, from his wisdom and knowledge, which is very great on these subjects, that I would accept that that probably is a fact, but it does not mean that it cannot be investigated and looked into. If, as I understood from the answers in Committee, there is going to be all this consideration of future regulations, then this merits being looked at much more closely. Rather than going on and on, because we have an awful lot to get through today, I beg to move.

Lord Beecham (Lab): My Lords, this matter was debated briefly in Committee. I made the point then that I had a good deal of sympathy with the intentions of the noble Baroness's amendment requiring a retrospective planning application, although it did not seem to me that the rest of her proposals—with all due respect—had been fully thought through in terms of how they might be applied.

In particular, subsection (2) in the amendment is unnecessary, because if there was a planning application then, of course, fees would have to be paid. There is also a real problem with subsection (3)—I think I said this to her in Committee as well—which prescribes the payment of an additional charge without giving any indication of how that might be calculated. I suggested that the matter could have gone forward on the basis that that would be determined by secondary legislation, but that has not appeared in this amendment. For those reasons, I am afraid that we cannot support the noble Baroness's amendment, although I suspect that she will not divide the House in any event. While her intention is very good, the means of carrying it through do not quite meet what is required.

Baroness Pinnock (LD): My Lords, I draw attention to my interest as a councillor in the borough of Kirklees and as a vice-president of the Local Government Association.

I agree with the principle behind the amendment moved by the noble Baroness, Lady Gardner of Parkes. The issue that she has brought to our attention is important, although, in common with the noble Lord, Lord Beecham, I am not entirely clear that the amendment that she has drafted will address the fundamentals behind the issue that she is trying to address.

4.45 pm

This issue is important because, currently, irresponsible individuals who believe that they can avoid the irritation of planning regulations and legislation go ahead and build at their own risk. They know they are taking a risk; no doubt they assess the risk of getting away with the development which might otherwise be turned down were planning permission sought in the normal way. Of course, that risk assessment might well be right. Certainly in my experience as a local councillor over a number of years, several developers got away with taking that risk and so had a development that they might not otherwise have been granted permission for.

The issue is that planning enforcement in local planning authorities has been depleted as a consequence of the cuts to local government. That has meant there are not enough planning enforcement officers to investigate where development takes place without planning permission except in the most outrageous cases. Even then, there is an example in my own area where a vast house, described locally as a palace because it was of that sort of scale, was built without planning consent. Enforcement action was taken, and it was agreed that it could stay. That person got a substantial financial advantage out of avoiding planning consent. It seems that the balance of the rules—in planning, it is nearly always a question of balance—is now weighed too heavily against enforcement and in favour of those individuals who want to take a punt against planning law and regulations.

I hope that the Minister will look at planning enforcement in the way he looked at planning fees to strengthen that area of local government planning departments and see whether planning enforcement could be reinforced. Every time an individual takes a punt against planning legislation and going through the proper routes and gets away with it, it undermines everything that we have discussed in this and the previous planning Bill. Most people do the right thing; those who do not and get away with it seriously undermine that level of community responsibility that enables us to have planning policies and rules that help

everybody. That is my plea, and I thank the noble Baroness, Lady Gardner of Parkes, for raising this issue.

Baroness Maddock (LD): My Lords, having listened to the debate, I will intervene briefly because this issue goes back a long way. I declare my interest as a vice-president of the LGA and many years ago I was a councillor.

One thing that happens is that, if people get away with this once, they go on doing it again and again. I was once successful in persuading the planning committee to say to this man, "You must change what you have done", to stop him in his tracks. However, there is a bit of a nasty turn to this, because I was standing at the bus stop in front of the building where he had to change the windows at the top and I heard this lady say, "Oh dear, it is a terrible waste of money doing that, isn't it?". That may have been the case, but this is important. I did not realise that nothing had been done in the time since I dealt with this issue years ago. The real problem is that, if nothing is done, people who do it once go on doing it again. We need to take that into account when listening to this argument.

Lord Campbell-Savours (Lab): My Lords, it is 43 years since I was on a planning committee and I am sure that the law has changed a lot. However, when I was an MP, I became involved in a case in the Lake District in which someone built a building without planning permission, and there was subsequently a row. The conclusion I drew was: "Knock it down". The law allows too much flexibility. The noble Baroness, Lady Pinnock, mentioned risk. People are prepared to take a risk, and the only way in which we can make this law work well is if we are far more vigorous in its application.

Lord True (Con): My Lords, I very much agree with what has been said and thank my noble friend Lady Gardner for tabling the amendment. I am conscious that we all want to make progress. This is an area where, in time, we should have some examination and this is not a statutory matter to address now.

I always conceive planning as being about good neighbourliness. One of the problems is that retrospective planning applications often come in when someone has encroached a little too much and not quite followed the drawings. Then, because a neighbour who has opposed an application is cross, they go to the council and say what they want to happen. One can get into a whole rigmarole involving costs, not only of retrospective application but of demands to building control such as, "Are you coming?", "I don't think that they are building on the right line", or, "They are moving that hedge".

Such areas, which seem small, have an impact on the issue of consent in the planning system, about which I have spoken to your Lordships in Committee on this and other Bills. For many reasons, including that given by the noble Lord, Lord Beecham, my noble friend's amendment does not work but I hope that we will hear some sympathetic sounds—I know we always do—from my noble friend on the Front Bench. This is an issue on which the Government might reflect as time goes by, because there is a sense that a lot of injustice is done out there by those who willingly or unwillingly play the system. I say to the noble Lord, Lord Campbell-Savours, that local authorities are generally loath to intervene unless it is a big issue. Planning officers ask themselves, "Would I have refused the planning application for that one or two-foot encroachment?". These are the kind of considerations that apply. People should do what they promise they are going to do; that is what the system is about and should be delivered. People should not play the system.

I do not think that we can take this matter further now but hope that my noble friend will think about it over the months and perhaps years—I hope not too many years—ahead and closely examine where the frontier between consent and abuse of consent should be.

Lord Judd (Lab): My Lords, I should declare an interest as an honorary officer of the Campaign for National Parks. I am glad that the noble Baroness has introduced her amendment and is standing by it here on Report because this is a worrying development. A growing number of people deliberately defy the regulations that are meant to operate. It is not just a matter of building something for which they do not have permission and looking for retrospective approval; a more sinister element is that they get approval with conditions attached—for example, compliance with national parks' general policy. However, the people then try to do what they want with the building and do not observe the conditions. There is an indication that they are doing this believing, for example, that the national park authority will be hesitant about pursuing them because it is worried about its budget, the costs and all the rest if that person appeals.

We must take seriously the prospect that the quality of an area can change within a short period because, once one person has done it, there is an invitation for all sorts of other people to do it too. I am glad that the noble Baroness is making a stand.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in this debate on Amendment 38. I particularly thank my noble friend Lady Gardner of Parkes, who has vast experience of not just national politics but, in particular, London politics. I know she feels very strongly about this issue. I have great respect for her and for the way she has presented the case. I am conscious that she has raised it on a number of occasions, most recently in Grand Committee.

Other noble Lords participated in the debate and sympathise with the general thrust of what my noble friend is seeking to achieve. They include the noble Lord, Lord Beecham, and the noble Lord, Lord Campbell-Savours, who stunningly remembers being on a planning committee 43 years ago. It is hard to appreciate that, but he clearly has vast experience in this area. There were also the noble Baronesses, Lady Pinnock and Lady Maddock, and my noble friend Lord True, who talked about good neighbourliness, which goes to the essence of it. The noble Lord, Lord Judd, sympathised with the thrust of what is being said here.

At the outset, I remind noble Lords that one thing that we are seeking to achieve in this legislation and more generally as a Government—supported, I think,

[LORD BOURNE OF ABERYSTWYTH]
by noble Lords from around the House—is localism, and therefore we have to be a little careful about resisting the temptation every time something goes wrong to weigh in and say, "That is not the right way to do it". I appreciate that there is more to it than that, but we need to keep that sense of perspective in our minds.

The ideal is, of course, that everybody should seek planning permission before they start work. That is what the majority expect and, indeed, what the majority of people do. Sadly, as my noble friend Lady Gardner of Parkes has experienced, that does not always happen. We therefore need a way to deal with these cases. Where a local authority considers that a planning application is the appropriate way forward, it can invite a retrospective planning application. Otherwise, local authorities have at their disposal a wide range of enforcement powers.

My noble friend's amendment calls for changes to the retrospective planning application process. I am afraid that the Government's position on this has not changed. I think I said in Committee, and I say again now, that there are many cases where there is a genuine error, so we need this process to deal with that situation rather than a harsher regime. The retrospective planning application process is there primarily to give those who have made a genuine mistake the opportunity to rectify the situation, but I appreciate that the examples that get into the media are much higher profile than that. We have had the haystack case, the palace in Kirklees and so on. Different considerations will apply there.

Local authorities have other tools at their disposal. Local planning authorities have flexibility, but planning applications have to be determined in the same way as any other application. My noble friend did not receive notification of the planning application. That is a mistake under the current law, and we need to look at proper enforcement. If she is able to bring forward evidence of the process not being followed, I would be very keen to look at it with officials, and I undertake to do so. I am sure that there are things that we can be doing better in relation to that with a view perhaps to looking to the future rather than this legislation. She has highlighted an important problem.

There is no guarantee that planning permission will be granted just because the development already exists. We have seen examples where that has not been the case, so we know that there are local authorities that are tough and are probably doing the right things in relation to some development. In some cases, the impact of the development may be mitigated by imposing planning conditions on the retrospective grant of planning permission. Otherwise, local planning authorities have a wide range of enforcement powers, with strong penalties for non-compliance, at their disposal. Where an enforcement notice is served and the person appeals on the ground that planning permission ought to be granted, the person is deemed to have made an application for planning permission and must pay a fee. That fee is twice the fee that would have been payable in respect of a planning application to the relevant authority seeking permission for the matters stated in the enforcement notice. This is in recognition of the additional work and would obviously act as a disincentive in that situation.

My noble friend's amendment would make retrospective planning applications compulsory for all breaches of planning control. As I say, we cannot accept that because we see situations where that would be inappropriate, as I think successive Governments have done. It would be difficult to enforce and could lead to delays and additional burdens. My noble friend's suggestion of a penalty fee in addition to charges in respect of the costs incurred by the local planning authority would unfairly penalise those who had made a genuine error, and discourage the submission of such an application for proper consideration by the local planning authority.

That said, I recognise that my noble friend has brought forward a very important issue. As I say, if she is able to come forward with some evidence of local planning authorities not doing what they should be doing and not enforcing the law, I would be very keen to see that; if other noble Lords have experience of it, I would be very keen to see that too. I can give that undertaking. However, while thanking my noble friend for bringing forward an important issue which clearly has resonance around the House, for the reasons I have outlined and in the light of the undertakings I have given, I respectfully ask her if she would withdraw her amendment.

5 pm

Baroness Gardner of Parkes: My Lords, I thank those who have spoken. I have been very impressed by how clear they have been and by how many have had direct experience of exactly what I have brought forward, which encourages me to think that we have a case that should be looked at. On my last amendment, the Minister remarked helpfully that he would be willing to look at the issues raised, particularly in terms of secondary legislation that was possibly going to come forward later in the year. If he could similarly assure me that this would be the case here, and the matter would not be just dropped and forgotten, I would be very happy to accept that assurance. It is an important issue, and ordinary people feel justifiably aggrieved when something like that happens and they did not even have the opportunity to know that it was going to happen before suddenly getting the letter which says "We have granted permission". You did not even know anything was going to be considered, and it has gone through the whole retrospective permission without anyone being notified.

Perhaps the Minister could do something to ensure that people considering retrospective permissions see that the correct consultation takes place and that people know that these matters are being considered. It is very upsetting for people when they suddenly find out that it is all a fait accompli. A very telling point indeed was made that if someone is doing this as a deliberate policy, they will do it again and again. A lot has come out in the debate today and I just hope that the Minister will say that he will look thoroughly into these issues in terms of possible regulations or secondary legislation on the subject at a later date.

Lord Bourne of Aberystwyth: My Lords, I shall respond to my noble friend's suggestion. There is certainly no intention to postpone action on this where action is

needed, but I would first like to see the evidence of what the problem is before identifying possible solutions to it. I certainly give her the undertaking that I very much look forward to her bringing forward evidence, but some of this seems to relate not so much to not having the legal process there but to the legal process not being enforced. If we see evidence of that, we can look at how it can be properly enforced, but I am very happy to engage in discussion with my noble friend. I think she knows me well enough to know that that would not be with a view to postponing action but with a view to amassing the evidence so that we can look at this.

Baroness Gardner of Parkes: I thank the Minister for that undertaking, which is very valuable. It is up to us now, particularly those who have spoken today and who clearly have direct experience of this. I would be very grateful if they would bring forward cases that they have come across so that the Minister has a fairly good list of things, ranging over different parts of the country, because the practice varies from place to place. He has given a very fair answer to my debate and for that reason I beg leave to withdraw the amendment.

Amendment 38 withdrawn.

Amendment 38A

Moved by ***Baroness Young of Old Scone***

38A: After Clause 13, insert the following new Clause—

"Planning: duty to have regard to the protection of ancient woodland and veteran and aged trees

In section 197 of the Town and Country Planning Act 1990 (planning permission to include appropriate provision for preservation and planting of trees), after paragraph (b) insert—

"(c) to refuse permission for any development which may result in the loss or deterioration of ancient woodland, and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location are wholly exceptional;

(d) to refuse permission for a development in respect of which there is insufficient provision made for the preservation of woodland and planting of trees; and

(e) to impose any such conditions and make any such orders as are necessary to protect woodland and trees.

(2) The local planning authority must—

(a) ensure that all planning applications are compatible with the protection and enhancement of the environment; and

(b) ensure that the protection and enhancement of the environment is identified as a strategic priority in the authority's area under section 19 or 35 of the Planning and Compulsory Purchase Act 2004.

(3) In this section—

(a) "ancient woodland" means an area that has been continuously wooded since the year 1600;

(b) "veteran and aged trees" means trees which because of their age, size or condition are of exceptional value culturally, in the landscape or to wildlife.""

Baroness Young of Old Scone (Lab): My Lords, I draw the attention of the House to my chairmanship of the Woodland Trust and my interests as president or vice-president of a range of conservation organisations as recorded in the register of interests.

First I thank the noble Baroness, Lady Parminter, who, in my absence abroad, led on this amendment in Committee. I also thank noble Lords who spoke so eloquently in support of the amendment. It seems to have done the trick—because I also want to thank the Minister and the Government, who have responded since then, in the housing White Paper, to the evidence of increasing damage to ancient woodland and veteran and aged trees with a strong statement of commitment to increasing their protection. All of us in this House, in the other place and among the wider conservation community, and all those who value ancient woodland, are very grateful. The Minister may therefore find it a bit churlish of me to move my amendment again, but let me explain why I am doing so.

I am delighted that the Government have clearly recognised the importance of ancient woodland and the need for better protection, and put forward a proposal for consultation to include ancient woodland in a rather bizarre little list in footnote 9 of the current *National Planning Policy Framework*. Planners would be encouraged by this footnote to recognise ancient woodlands as being as valuable as the rest of the list, which includes sites of special scientific interest, national parks and green-belt land, meaning that the development which impacts on them should be more definitively restricted. The list is also strengthened in that it is no longer just a set of examples but intended to be a clear list of categories of land where development should be restricted. I absolutely welcome the Government's intention to improve protection but fear that the actual proposal will not deliver that very welcome intention.

I have two concerns about the footnote list approach. First, the list includes a range of types of protected land, all of which have got very different levels of protection. I can give two examples. Sites of special scientific interest have had strong protection for some time, and indeed the rate of loss or damage to SSSIs has dropped hugely over the last 20 years—from the early 1990s, when 15% of SSSIs were lost or damaged every year, to the position now where only about 0.1% of SSSIs suffer damage each year. But at the other end of the spectrum of this list are local green spaces, which, alas, get challenged by development on a regular basis. It is therefore not clear what level of protection amending this footnote would result in, in practice, for ancient woodland.

My second concern is that each of these categories in the list has its own corresponding policy wording in a specific full paragraph elsewhere in the NPPF, and ancient woodland is no exception. The relevant wording is paragraph 118:

"planning permission should be refused for development …unless the need for, and benefits of, the development in that location clearly outweigh the loss".

A kind of balancing act is described there. It is absolutely clear that the wording in paragraph 118 is currently failing to deliver sufficient protection for ancient woodland. It seems to imply—and I know that planners interpret it this way—that the protection of ancient woodland is optional if the development has benefits. We know from surveys that that is how planners see it. I believe that paragraph 118 also needs to be addressed if we

[Baroness Young of Old Scone]
are really going to secure the clarity of increased protection that I am sure the Government intend in such an admirable way.

My amendment would place protection in equivalent terms on the face of the Bill—though in reality none of us wants that. What we need is one further change in paragraph 118, and I urge the Minister to seriously consider adopting the revised wording that has been suggested previously by several parties who have already considered this matter in some detail, including the Communities and Local Government Select Committee, the All-Party Group on Ancient Woodland and Veteran Trees, and the Woodland Trust. The wording that is being commended by those groups in paragraph 118 would make it clear that:

"Substantial harm to or loss of irreplaceable habitats such as ancient woodland should be wholly exceptional".

That is an equivalent wording to the level of protection given to heritage buildings.

So I hope that the Minister does not judge me ungrateful. It cannot be often that a new White Paper commitment comes within days of an intervention in the House of Lords. I am sure that it was entirely due to the skilful advocacy of the noble Baroness, Lady Parminter, and the other noble Lords who supported the amendment in Committee, though I have a sneaky feeling that, as a result of the logic of the case and the persuasion by a range of groups and parliamentarians across both Houses, the Minister has actually been cooking up this improved commitment for some time. There was a bit of winking and nodding going on at each of my meetings with Ministers in both Defra and the DCLG.

This further wording would ensure that there was no confusion in the minds of the planning authority or the developers about the Government's intended protection. That cannot be anything other than a benefit in the drive to deliver houses for people. It would help developers by making it clear that ancient woodland should be avoided, and hence streamline a process that might otherwise get bogged down when the controversial damage of ancient woodland is enthusiastically campaigned against by local communities or conservation bodies.

There is much to play for. Since the NPPF was introduced in March 2012, more than 40 ancient woodlands have suffered loss or damage from development. The Woodland Trust is currently dealing with more than 700 ancient woodlands under threat across the UK, and the number continues to grow. One last tweak to paragraph 118 of the NPPF could deliver a landmark improvement. I hope the Minister, who has been absolutely ace so far in his support, can get that one further change to the NPPF and complete the package. I beg to move.

Lord Framlingham: My Lords, I support the amendment from the noble Baroness, Lady Young of Old Scone. I think the words "clearly outweigh the loss" are not going to give the same protection that "wholly exceptional" would. For those of us interested in this issue, and that now includes many people, our campaign and indeed our mission is to turn the fine words about and growing understanding of the value of trees and woodlands, particularly ancient woodlands, into action. In this, the lead given by the Government is crucial.

It is a question of priorities. In planning terms, the balance between the built environment and the natural environment is slowly being understood. Trees are not just an adornment to the built environment but play a much more important role in so many ways. In our rush to build more houses, it is important that the role of trees is kept at the top of the agenda. Ancient woodlands are so very valuable and, although planning deliberations can sometimes drag on for years and be extremely complicated, a thoughtless 10 minutes with a JCB can do untold and irreparable damage.

The amendment would give greater clarity to developers, who would be better aware of what they could and could not do. It would fit very well with the idea of every planning authority holding maps and registers of ancient woodlands and important trees, saving everyone time and money as well as protecting the ancient woodlands. The current White Paper is extremely interesting and helpful but the Bill is our current vehicle for these important changes. It is an opportunity not to be missed. If you let one vehicle go, you never quite know when the next one will come along—and what ancient woodlands may be damaged in the meantime.

The Minister has been extremely helpful and constructive in all these debates, but he knows what a significant effect a modest tightening of the law can sometimes have without detriment to the planning process. This is just such an issue, and I hope he will be able to accept the amendment.

Lord Berkeley of Knighton (CB): My Lords, I am very attracted to the amendment. I agree with everything that I have heard, and I am encouraged. I know the Minister is himself very keen on trees, green spaces and ancient woodland.

It is terribly important, given what the noble Baroness was saying, not to forget how, especially in underprivileged areas, trees and green spaces have been shown in recent research to have a quite astonishing effect on the well-being, the social cohesion, of a society. We really have to treasure these trees. I am pleased to see that we are talking about not just ancient woodland but the odd oak tree that has been there for 300 years and which can be for a community a kind of fulcrum—a meeting point, something which generates huge affection. The fact that sometimes these trees have been, as the noble Lord has just said, bulldozed out because of a slip or because stringent due attention was not paid to them is often a tragedy for a local community.

I note that in proposed new paragraph (c) in Amendment 38A there is the caveat that the development in that location is "wholly exceptional". The Government and the Minister therefore have a way out in this clause—it is not absolute. Where woodland communities are concerned in their relationship to them, we have to be as strong as possible in protecting ancient woodland, trees and green-space areas.

5.15 pm

Lord Judd: I am very glad to support my noble friend in this amendment. She has put the case admirably this afternoon. I, too, am deeply impressed by the Minister. I have been in this place a long time now, and I find it difficult to think of a Minister who has gone

out of his way more generously to try to meet wishes expressed in the context of serious debate. We had a very serious and useful debate in Committee.

Ancient trees and woodlands are almost impossible to value, because they have so much significance. I am particularly concerned in this context with urban areas. We are desperate to build houses and we very much need more houses in this country; it has to be a priority and we have to get on with it—but it is not just about putting people into shoeboxes. It is about putting people into a situation in which they can live and in which their imaginations can be stimulated—in which they can feel the spiritual dimensions of life, as the noble Lord has just said. All trees contribute in that context, but ancient trees have particularly powerful significance. Of course, if there are imaginative teachers in local schools, there can be references in the context of the education going on in those schools to what those trees represent in terms of the history of the country. We are at a time when we are very worried about national identity; we are very worried about people feeling what it means to be British and how the roots of being British are planted. Of course, the tree is a link to the past; what the tree has witnessed in its life is almost invaluable. From that standpoint, we ought to be very certain indeed that we are doing everything possible to protect trees in the situations that might threaten them.

I too find the wording in the Bill not convincing. Sometimes, there is an urban community—perhaps a relatively deprived community—where there are trees that matter in the ways we have been describing. What happens when it comes to the development process? You have the big forces of development—the big boys at work. How does the community assert itself effectively? We want to make sure that it can and that those who are concerned for the community can make representations on its behalf.

Personally, I would always like a total ban and to say that developers everywhere should do their development around the trees, particularly where there are ancient trees. This would be the ideal, but what we are putting forward seems to be a reasonable compromise. I much appreciate the sincerity and commitment of the Minister in trying to find ways of meeting our concerns. So I support him in every way I can—together with others, I am sure—by saying: let us just go this further mile and make sure what he has already been trying to do can be done well and effectively. I believe my noble friend's amendment will make this possible.

The Duke of Somerset (CB): My Lords, in Committee we heard powerful arguments both for retaining veteran and ancient woodlands and for the planting of new trees in new estates. I welcome the proposals in the White Paper but, as the noble Lord, Lord Framlingham, has said, this is the vehicle that we are discussing now. So I support this amendment, as I feel strongly that trees in any form hugely enhance an urban setting. They can ameliorate the sterility and newness so often and inevitably associated with such new developments. It is not just landscape or townscape; it is biodiversity and ecology that are improved. It also has a beneficial effect on the people, young and old, who live in the new community; it is they who will benefit from these trees. Trees and plants promote respect and foster community by softening the architecture and giving scope for educational projects.

In Committee, I gave a long list of benefits associated with urban tree planting, so I will not repeat them now. I will merely say that trees add value to a scheme, over and above any detriments that one can imagine. As to what those detriments may be, I await the Minister's reply, as I cannot discern any. When he answered in Committee, he had none, except to cite the forthcoming White Paper. I thank him for what this will do, but support the greater aims of this amendment.

Baroness Parminter (LD): My Lords, from these Benches, I support the intent behind this welcome amendment. I too thank the Minister and the Government for what they have already committed to do. If we could just nudge them a little further, it would give life to the position that this House made clear in Committee—which is that we believe there should be an equivalence of protection for ancient woodlands. At Second Reading, the noble Baroness, Lady Young, used the memorable phrase,

"the cathedrals of the natural world".—[*Official Report*, 17/1/17; col. 161.]

We need to be clear that the wording has to be watertight. We have seen with the *National Planning Policy Framework* that every word matters. We have boiled down planning policy guidance and we need planners to be clear about the level of protection that the Government want to offer to ancient woodland. If it is not given an equivalence in the wording, then there will be arguments about the level of protection that the Government wish to see and that this House has so clearly articulated that it would wish them to give.

That equivalence is important but if we do not do it now, at an early stage when we are beginning to understand the natural capital resources in trees—their cultural, social and biodiversity significance—there will be endless arguments among planners as this emerging field develops. The Minister's clear statement that the Government want to give protection to ancient woodlands is welcome. With a small step in this direction, and tightening the wording of the *NPPF*, the Government could give us confidence that this intention can actually be delivered on the ground.

Baroness Andrews (Lab): My Lords, I could not agree more with the noble Baroness, Lady Parminter. There is a strong argument for consistency of vocabulary and for the notion of significance in planning and the treatment of national assets. Paragraph 132 of the *NPPF* states that:

"The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction … As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification".

This new status has taken many years to achieve. I remember having discussions in the department about how to increase the protection of ancient woodlands at least a decade ago. Thanks to the Minister and his officials, we have now got to the point where we recognise that there is an equivalence between a natural and a built asset. When we are dealing with the question of loss—even more than damage, in terms of ancient woodlands—it is fair to look at what equivalence can

[Baroness Andrews]
be made in relation to the NPPF. It is not just the use of language but the significance we attach to the notion of damage, and how extensive or irreparable it is, and to what it means to be wholly exceptional.

The formula which my noble friend Lady Young has come up with is quite sensible. It will save time and grief for planning authorities and people who have to deal with balancing these issues. Greater clarity and some consistency would be a help rather than an obstacle to achieving the objective and facilitating development.

Lord Bourne of Aberystwyth: I thank the noble Baroness, Lady Young of Old Scone, for her kind words and for raising again the important issue of protecting our ancient woodlands and veteran and aged trees. She should not underestimate the role she has played in putting this on the agenda. She made a very powerful case, as did other noble Lords. I thank noble Lords who have participated in the discussion, including my noble friend Lord Framlingham, the noble Lord, Lord Berkeley of Knighton, and the noble Duke, the Duke of Somerset. The noble Lord, Lord Judd, spoke with great force and passion as he always does on these issues; his generous words were most kind. I agree with the noble Baroness, Lady Parminter, about ensuring that we have watertight protection, and with the noble Baroness, Lady Andrews, who talked about consistency of vocabulary and these "irreplaceable assets".

In Committee we had a range of passionate and compelling speeches including from many noble Lords who have spoken to this amendment. The noble Baroness, Lady Parminter, the noble Lord, Lord Judd, the noble Duke, the Duke of Somerset, and my noble friend Lord Framlingham all spoke then, and again today, about protecting these irreplaceable natural resources. The noble Baroness, Lady Young, so evocatively—almost hauntingly—described them as the "cathedrals of the natural world". I do not know whether she has ever thought about taking up another career as a wordsmith, but there is a Daphne du Maurier role to be carved out there. For somebody such as me, who is particularly attracted to cathedrals, that haunting image certainly brings it to life.

We have responded positively and are now consulting on the housing White Paper. This is not part of the legislation but part of the housing White Paper; we have succeeded in getting it in there and are very much committed to this. At the end of the consultation the Government will, we hope, clarify the protections for ancient woodlands and aged and veteran trees along the lines we have been talking about in this debate. The proposed change would put policies on ancient woodland and aged and veteran trees alongside other national policies. I am pleased that the proposal was warmly welcomed by the Woodland Trust and I thank the Trust for its role in helping on this. I believe we are making massive progress.

A consultation on the White Paper is open until 2 May. I encourage noble Lords and, through them, other sympathetic organisations, to contribute to the consultation, so that we can achieve something along the lines that noble Lords have been discussing. We are holding engagement sessions with a variety of groups alongside the consultation, so that everyone has the opportunity to contribute their views. The consultation will enable us to work together with these parties on appropriate protection for these irreplaceable assets and habitats.

5.30 pm

I understand how passionately the noble Baroness and others feel about this subject, for which she has certainly been a tireless advocate. The proposed change to the NPPF would further protect our ancient woodland. We will work constructively to ensure that any concerns raised during the consultation—as I said, I hope people will put their concerns into the consultation—are taken forward. However, we cannot pre-empt the outcome of the White Paper consultation. Having opened the consultation until 2 May, we have to wait for that process to unroll. With the commitment given that the Government are determined properly to protect these assets and cathedrals of the natural world, this is the best way for us to move forward. I am very happy to continue to engage on this with the noble Baroness and others, including the Woodland Trust, on how we move things forward, but it has to be through the consultation, to ensure we follow process in the fair and proper way.

With the assurance that I am very happy to meet the noble Baroness—and, as I said, other noble Lords who may wish to join that process as well as the Woodland Trust—again following this debate, I respectfully ask the noble Baroness to withdraw her amendment.

Baroness Young of Old Scone: My Lords, I thank all noble Lords who spoke so helpfully and supportively in this debate. It is wonderful to have this degree of support for these cathedrals of the natural world. I have to make a terrible admission to the Minister: I discovered in my research that he is rather keen on cathedrals, so it seemed a good idea to call these the cathedrals of the natural world. I thank the Minister very much for his kind words about the case. They are irreplaceable; we do need equivalent protection. I thank noble Lords who pointed out the value of ancient woodland, the help recognition of this would give to both planners and developers to avoid conflict for the future, and the need to strengthen the NPPF further.

The Minister kindly pointed out that the consultation, which he cannot pre-empt, goes on until 2 May. I hope he realises that means there are three months of wall-to-wall pressure heading in his direction, as we gird the loins of many others to respond to the consultation along the lines of the support that has been given in this House. I hope this is another of the Minister's nods and winks but, no doubt, we shall find out only at the end of the consultation period. So, with many thanks to all supporters and to the Minister for the help he has given so far, I look forward to the next three months of enunciating this case, until the point where, eventually we get the change that is needed to bring into effect the very real and welcome commitment that the Government have shown. In the meantime, I beg leave to withdraw the amendment.

Amendment 38A withdrawn.

Amendment 38B

Moved by ***Lord True***

38B: After Clause 13, insert the following new Clause—

"Local determination of the application of prior approval for conversion from office to residential use

(1) Notwithstanding—

(a) any section of the Town and Country Planning (General Permitted Development) (England) Order 2015, the Town and Country (General Permitted Development) (England) (Amendment) Order 2016, or

(b) any section of any other order or regulation purporting to convey a right to developers to automatic prior approval of the conversion of an office (Class B1(a)) or retail premises to residential use (Class C3), or the demolition of such premises for such conversion,

consent may be refused by the local planning authority for the conversion, or demolition for conversion, of any such office or retail space to residential use, if the local authority has, by a majority vote in Council, passed a formal resolution stating that the purported right to approval for such demolition or conversion without full planning consideration shall no longer apply within that local authority planning area, or in any part of it.

(2) In reaching any decision on the conversion of offices to residential use the local planning authority shall be able to take account of all representations from the public or from local businesses, and of all aspects of an approved local plan, neighbourhood plan or supplementary planning document incorporated within an approved local plan, provided that it has previously passed a resolution under subsection (1).

(3) A resolution under subsection (1) may only be adopted if the local planning authority has laid before the Council no less than a week prior to the vote under subsection (1) a report demonstrating that—

(a) the operation of prior approval is damaging local businesses and the local economy and that planning control over the retention of office space is necessary for the future economic development of the area, or

(b) active businesses within the area covered by the resolution are being expelled from office or retail space to enable its conversion to residential use.

(4) No resolution may be adopted under subsection (1) if the local authority concerned has not met its housing targets in the preceding year, or cannot satisfactorily demonstrate in the report tabled under subsection (3) that it will exceed those targets in the year concerned.

(5) A copy of the report laid under subsection (3) must be submitted to the Secretary of State no later than the day on which the agenda for the Council meeting concerned is published.

(6) The Secretary of State may set aside, within three months of its passing, any resolution made by a local planning authority under subsection (1) if the Secretary of State does not consider that conditions under subsection (3)(a) and (b) are being met."

Lord True: My Lords, I apologise for bringing new material before the House at this stage of the Bill, though I did give notice that I might do so at the previous stage. This Bill has been scheduled in a way that could not be more difficult for me. I declare an interest as the leader of a London borough and this evening is our annual budget council meeting, which begins at 7 pm. Looking at the clock, this will probably be the first council meeting in 20 years on the Front bench for which I have been late—I hope I will not miss it, as I hope your Lordships are not that prolix. But it is a testimony to the importance that I feel this matter deserves.

This is something that came up during the passage of the Housing and Planning Act last Session and I argued the point at some length. Ultimately it was stated that it was a red line for the then Chancellor of the Exchequer. I felt that his red lines were around trying to ensure it was possible to oust small businesses in the suburbs of London and that, had he found his red lines somewhere else, perhaps history might have evolved differently. But that is the past. I have since found, having been given some indication that there would be a readiness to discuss this matter, a willingness to discuss it, personified by my noble friend on the Front Bench. This is entirely distinct from the attitude that I encountered not so long ago and I am enormously grateful for that. I underline everything that so many noble Lords have said in the passage of the Bill about the open and thoughtful conduct of my noble friends on the Front Bench and indeed of Ministers. I met the Minister, Mr Barwell, this morning and I found the same open response there.

In a nutshell, this long amendment is about trying to close off some of the issues that were raised with me on the previous occasion. Under the system that was introduced in May 2013, permitted development rights allow office floor space—classified B1 in the technicalities—to be converted to residential space without planning permission. In some areas of the country that is fine. Indeed, these changes have made a great contribution to housing development, including in my own borough, where no one has an interest in defending redundant office space. At no stage have I wished to strike down the willingness of local authorities to go along with that power and use it.

The problem is that in some areas, including my own authority of Richmond, which is a conspicuous example, the difference in value between office property—or, for instance, a stables in my ward that has been affected—and residential property is so great, at 3:1 or 4:1, that the policy has acted as a magnet for unscrupulous developers. I have even traced one or two with offshore designations. They come in, buy properties and begin to expel working businesses. As a Conservative, this is absolutely contrary to everything I believe in and to what our party stands for—aspiring for people who work hard. Indeed, how often do we hear such things from all Benches in this House?

It is wrong that, to make profits for somebody else who has no interest in the community, offices and business premises can be closed. This should at least be subject to local determination. I do not wish to trouble the House at too great a length, as that would repeat some of what I said last year, but in Richmond, up to last autumn, we had 251 of these so-called prior approvals and we have lost more than 30% of our overall floor space. In more than half of the cases, the offices subject to prior approval were, in the jargon, either fully or partly occupied. That meant someone was trying to make a living or was employed there. The owner saw an opportunity to make a profit on this arbitrage between the two classes and pushed somebody

[LORD TRUE]
out. I think that is wrong, as do all of us in local authorities and local government. There was a wonderful malapropism from my noble friend earlier when he said that the "interesting" parties would be consulted. I am not sure that most people find local government very interesting but we are certainly interested.

We come across many personal cases of people who are homeless, terribly sick, suffering from dementia or in poverty, but one of the most difficult things I have found has been having to explain the situation to constituents—in one case, the grandson of somebody who founded a business in the premises from which they were being ousted so that a developer could make a profit. Therefore, I have put forward some proposals for how this might be addressed, although I make no claim that my solution is necessarily the best one. I look forward with interest to hearing what my noble friend on the Front Bench has to say.

Article 4, which is often proposed as a solution, is not perfect. It is too slow. In the case of prior approval, the new buildings make no contribution to infrastructure —schools, transport or health—and are not required to meet space standards. There is no consideration of loss of business rates or council tax income and so on, and under Article 4 planning fees do not come to the local authority. The current provisions of Article 4 do not allow a planning authority to demand a fee for associated planning applications, so even the standard approval application charge of £80 is lost. Of greater concern is the loss of the planning application fee.

In my borough, according to the figures that I have been given, the 251 prior applications determined would previously have generated fees of in excess of £400,000 but rendered just £20,000 for the borough under the prior approval process. There is a massive gain for the arbitragers and a massive loss for the local authority. A much sharper process will have to be introduced swiftly into Article 4 if we are to address this matter. The problem shifts because the arbitragers move very fast from one place to another, so at the very least some reform is needed.

I also hope the Government will think again about extending the proposals—certainly in areas such as mine, which are already badly affected—to allow demolition and replacement without planning permission. Instead of going in the direction of amelioration, this is going in the wrong direction.

In my amendment, I have tried to accept two points that were legitimately put to me by the Government: first, that a local authority should be able to show that it is conforming with its housing duties and meeting its housing targets; and, secondly, that at some point the Government must have a stopping power if a local authority behaves unreasonably or if it can be shown that a local authority has no reason, in terms of lost employment or threat to the economy, to act. Again, I am not sure whether my formulation is right, but I hope that if my noble friend on the Front Bench—I anticipate that he might give me some hope—cannot accept that this is the way forward today, he will be prepared for there to be further considerations and discussions on this matter. I believe that that is the spirit that I am finding in the Government, but I beg him to understand that, in the spirit of localism, something which may be a boon in other parts of the country is a bane in ours. I hope we will find a way forward to resolve what I believe, in terms of the eviction of businesses, is a social evil.

5.45 pm

Lord Tope: My Lords, I have added my name to the amendment of the noble Lord, Lord True, and, once again, I find myself supporting him strongly on this issue. We went through the Housing and Planning Bill together, usually extremely late at night—I recall being worried about whether I would get away in time to catch my last train. It worried me at the time that Conservative Richmond and Liberal Democrat Sutton, which are almost neighbouring boroughs, were so much in agreement. Now, when I hear that tonight we might be keeping the noble Lord, Lord True, from his budget-making council meeting, I feel that I almost owe it to my Liberal Democrat colleagues in Richmond to speak for at least another three hours on this extremely important amendment. Maybe we will do that.

I strongly support the noble Lord, Lord True, on this issue. I was, for 13 years, leader of a council in an almost neighbouring south London borough—Sutton. As I have said many times in this Chamber, I was a town-centre councillor in that borough for 40 years. I should perhaps add that it is still Liberal Democrat run after more than 30 years, so we are clearly doing something right there. This is a serious issue. It has affected Sutton and many London boroughs, and no doubt other parts of the country but particularly London, where residential property values are much higher and property owners and developers can make much more money from residential development than from office development.

Like the noble Lord, Lord True, in spite of the temptation he offered me, I will not go through all that I have said in previous debates, both on the Housing and Planning Bill and in Committee on this Bill. This matter was discussed in Grand Committee. I know that the noble Lord, Lord True, was unable to be there but I raised the issue there as well. I repeat that, in the time it took us to get an Article 4 direction into the town centre in Sutton—in a little over a year, but I will come back to that in a minute—the town centre lost 28% of its office space in about 18 months. The noble Lord, Lord True, talked about the figures for Richmond. Similarly, the percentage of office space in Sutton that was occupied or partly occupied was 62%. So we are not talking about empty and redundant offices which are past their sell-by date or are in areas where they are no longer needed; we are talking about active employment zones where people have jobs or go to shop or eat in their lunch hours, and which are a very important part of the local community.

I mentioned the Article 4 direction, which eventually we got for the town-centre area. Initially, my council proposed to get an Article 4 direction for the borough as a whole. I see the noble Lord, Lord True, nodding in agreement. Perhaps that was also the case in Richmond—I know that it was in a number of other London boroughs. It was made very clear to us by the Government at the time that that was a non-starter—it would not happen. So in Sutton we attempted to get an Article 4 direction

in rather more targeted areas. Again, it was made clear to us that that would not succeed, so we targeted solely the town-centre area, to which I have referred on a number of occasions.

If you introduce Article 4 immediately, you are liable for considerable compensation payments to potential owners. It is simply not a viable option, particularly in a valuable town-centre area, so it needs 12 months' notice. That was probably a significant contributor to why we lost 28% of our office space in the notice period for the Article 4 direction. As I said in Grand Committee, since Article 4 has applied in the town centre, that process has slowed down considerably for a number of reasons, but what has happened now is that the same developments are happening in a number of the district centres, where Article 4 does not apply and where, frankly, to go through the lengthy and expensive process of introducing Article 4, even if it were likely to be successful, would be time-consuming, expensive and possibly not so effective.

Minister after Minister, including the noble Lord on the Front Bench today, has quoted Article 4 as the answer to this problem. Clearly, attitudes have changed, and perhaps the understanding of the problem is greater than it was. Are the Government any more minded now than they were 12 or 24 months ago to accept Article 4 directions for the whole of a local authority area, as distinct from a very targeted approach? If that were the case, it would be very useful to know that from the Minister and would at least be of some help—and a very refreshing and welcome change.

I share the view of the noble Lord, Lord True, that the proper answer to this issue is to allow local authorities to decide for themselves, knowing and recognising the local situations. Like the noble Lord, Lord True, and as I have said on other occasions, I have no problem with the issue in principle. I understand and entirely accept that in other parts of the country it has proved very successful. However, in our part of south London, and in other parts of London, exactly the opposite has been the effect; it has been disastrous.

I turn now to the reason for which this measure was introduced. The current Minister, Gavin Barwell, a former Croydon councillor—another south London councillor—has said that housing need and the need to meet the Government's housing targets override any concerns about permitted development rights. As I said before, it is not just about housing numbers. It is about housing need and about actually getting the right sorts of homes—not necessarily houses—in the right places. It is about the homes that are needed in areas where there are jobs for people to work in and where they support the local economy and do not detract from it.

Above all, this should contribute towards affordable homes. I leave aside for the moment what is the definition of an "affordable home" in south London, but south London needs affordable homes, and this process is providing very few, if any, affordable homes at all. Indeed, London Councils gives some figures, stating that:

> "Between May 2013 and April 2015 at least 16,000 new dwellings have avoided the full planning process through office-to-residential PDRs. Had these developments been required to seek full planning permission for their conversion, many of them could have been required to contribute to affordable housing provisions",

and, indeed, to contribute in many other ways to the local infrastructure—all of which is avoided by permitted development rights. It is questionable to what extent these really contribute to housing need in parts of London, as distinct from housing numbers. We should remember that there is an important distinction there sometimes.

A final point, which I raised very late at night during the Housing and Planning Bill, is that I would understand this a bit better if it was felt that the councils concerned were failing to meet their housing targets. Almost a year ago, I quoted the figures from my own council, and no doubt the noble Lord, Lord True, could do the same for his council. For each of the previous 10 years, my council—of which I am no longer a member—has more than met its housing target. Taken over the 10 years as a whole, housing completions in our borough were 130% above target. What is the justification for imposing the permitted development rights when it means losing all other planning gain that comes from such developments and, most importantly, losing the opportunity to get more much-needed affordable housing?

For all those reasons, I am more than happy to support, once again, the amendments of the noble Lord, Lord True. Like him, I do not know whether they are precisely right or necessarily the right answer. For me, the right answer is to trust the local authorities to do what is best for their area. But if we still do not have a Government willing to do that—I accept that the coalition Government were no better; indeed, they were arguably worse—then at least let them allow some leeway in those areas where it is an extremely important and pressing issue. What is happening in London today will happen in other parts of the country very soon, if it has not happened already.

Lord Porter of Spalding: My Lords, I support the amendment and declare my interests in the register as chairman of the Local Government Association and leader of a small rural district council, which, thankfully, is not affected by this issue and I do not think will, at any point soon, be directly affected by this issue.

I apologise to the House because, having tabled a similar amendment for Grand Committee, I was unable to attend to move it because I had an important diary clash and was speaking elsewhere at a conference. I thank my noble friend Lady Cumberlege for moving the amendment, which by all accounts she did much more eloquently than I would have done, so noble Lords had the bonus of having a better speaker delivering it.

I will not say too much because I need my noble friend to get back to make sure his budget is safe. This is a problem in very few areas around the country. It would not take much to shift from the Government's point to be able to meet at least some of the concerns that are being raised. I do not think that anybody has a problem where redundant office accommodation has been lost that then becomes a benefit and an asset to the community by being turned into residential. But when this policy is driving viable businesses out of their homes, it has probably gone a step too far. Having listened to the debate on the previous amendment, I wonder whether it would help the Minister if we started to refer to these offices as white-collar cathedrals.

Lord Kennedy of Southwark: My Lords, I will speak very briefly because I want to ensure that the noble Lord, Lord True, can get off quickly to his budget meeting tonight. I certainly support the noble Lord and the noble Lord, Lord Tope, in their amendment and I am sorry that I did not actually sign up to it; that was an omission on my part. I am also very glad to be part of this south London, all-party coming together, certainly on behalf of Labour-controlled Lewisham. We would be very much in support of the amendment in front of us here. The noble Lord has set out a compelling case, and I hope that the noble Lord, Lord Bourne, can respond positively to that. I know that he will certainly try his best and I look forward to his response.

Lord Bourne of Aberystwyth: My Lords, I thank the noble Lords who have participated in the debate on this important amendment. I thank in particular my noble friend Lord True, who has been very committed to this issue. He has been a tireless advocate of change in relation to permitted development rights for office to residential and has been extremely generous with his time, both with me and with officials, particularly in sharing with us his experience in Richmond. There is no clearer indication of his commitment to his borough than that he is here this evening prior to going to the meeting on the all-important budget.

I also thank the noble Lord, Lord Tope, for giving his perspective from Sutton. I appreciate that this is largely a London issue. I do not know whether it is a particular issue in the borough of the noble Lord, Lord Kennedy, but it seems to be more focused on London than elsewhere—perhaps for understandable reasons.

Before turning to the detail of the amendment and what I am proposing, I will say a few words about why the Government see permitted development rights that support the delivery of new housing as an important tool in helping to address the current housing challenges the country faces. That is true of the Government, it is true of the department and it is true of the Minister, my honourable friend Gavin Barwell, although he does not believe that it comes without the need to act in particular instances. I do not think he sees this as a totally monochrome issue.

6 pm

The Prime Minister has made clear that the chronic shortfall in the delivery of new homes is one of the greatest barriers to progress in Britain today, which I am sure we would all agree about as a basic principle. As we have said as a Government many times over the last few weeks, the housing market in England is not working. Noble Lords have identified that issue, too, and therefore we have announced through the White Paper a series of measures to help the country to plan for, and build, the homes it so desperately needs. This includes plans to diversify the market by bringing in smaller and medium-sized builders, encourage innovation through modern methods of construction and attract investors to develop new homes for rent as well as for sale.

At the heart of the housing White Paper is a clear expectation that every part of the country should have in place an up-to-date local plan that starts from an honest assessment of the need for new homes in the area. The White Paper also proposes to introduce a new housing delivery test, which will hold local authorities to account on the delivery of sufficient homes in their areas to meet local need. While I recognise the concerns that noble Lords have highlighted today, it is clear that permitted development rights in generality for the change of use to residential are delivering new homes. In the year to March 2016, over 13,800 additional new homes across England were delivered under these rights, providing young people and families with a chance of a much-needed new home. Over 12,800 of these homes came from the change of use from offices to residential. Such statistics cannot be lightly ignored. These rights play an important role in the planning system, making effective use of existing buildings as part of our broader brownfield strategy, avoiding the need to build on greenfield land, for example.

However, I recognise that while the national picture is positive in terms of how these permitted development rights contribute to housing delivery, in some places—we have heard specifically about two today—there have been concerns about the local impact. My noble friend Lord True and the noble Lord, Lord Tope, in particular have spoken eloquently about this and the experience of the rights in their areas.

Again, at the national level, the picture is positive. The British Council for Offices reports that the market is responding, particularly in regard to prime office space. In addition, it is also providing cheaper and smaller office space, including through hub, incubator and serviced office models. In addition, Jones Lang LaSalle reports that in the year to December 2016, overall UK office rents fell by 1.3%. However, the Government accept that this is not the picture everywhere, and I assure noble Lords that we are sympathetic to their concerns about the impact of the right in certain areas. Where there are local issues, it is already open to the local planning authorities, as has been said, to bring forward an Article 4 direction to protect the amenity or well-being of the area. We know that local planning authorities are already doing so, with 33 directions having been made to restrict office to residential permitted development rights in specific areas, including in the London boroughs of Richmond and Sutton, as, in all fairness, we have heard. Although rarely used, the Secretary of State retains powers to intervene in directions—for example, to modify a direction where it is too widely applied.

Having listened carefully to the concerns of my noble friend Lord True and the noble Lord, Lord Tope, and to the points made briefly by the noble Lord, Lord Kennedy, during this and previous debates, I am interested in the approach suggested in this amendment that areas that are delivering the homes that their communities need should have greater flexibility to remove permitted development rights. Building on the existing Article 4 process, I am keen to work with my noble friend Lord True and the noble Lord, Lord Tope, to explore an approach that would provide more certainty that where an Article 4 direction removing the permitted development right for the change of use from office to residential is necessary to protect amenity and well-being, the Secretary of State will not intervene where an area is meeting its housing need, tied to housing targets. As now, a direction

will still need to be supported by robust evidence of the impact on amenity and well-being, including from the loss of office space. In particular, I am interested in exploring how we can build on the proposals in our recent housing White Paper for a new housing delivery test. I am keen to discuss this proposition further with my noble friend Lord True and the noble Lord, Lord Tope, and to return to this matter at Third Reading. This approach would reflect the intent of my noble friend's amendment in that it provides local flexibility for those areas that are meeting their housing requirements to have greater say over where the right would apply, as long as they can demonstrate that removal of the right is necessary, without adding new procedures or complexity to the statute.

I have also heard concerns raised, and discussed them with my noble friend Lord True, about the importance of ensuring that local authorities are adequately resourced to consider planning applications in areas where an Article 4 direction is in place. If noble Lords agree, I would like to return once again to this matter at Third Reading. In the light of assurances on those two important issues, which I know have been raised by noble Lords, I ask my noble friend Lord True and the noble Lord, Lord Tope, not to press this amendment to a vote at this stage.

Lord True: That was a very gracious response. Obviously, I want to study carefully what my noble friend has said in *Hansard,* but it would be churlish not to accept his offer to look into ways of resolving the issue. I am extremely grateful to have that for the first time. This reflects what I described in my opening remarks today as this very constructive attitude from the Front Bench this time round. I could not be more grateful for that.

I sincerely thank the noble Lord, Lord Tope. It seems quite a long time ago but he was my noble friend when we started along this road in 2013. He has been staunch on the subject because, like me, he has seen it in real life. Good policy has to reflect real life and be flexible enough to accommodate the wrinkles of life. We are not machines. I am grateful to him for his strong speech this evening. I agreed with every word he said. I am obviously also extremely grateful for the brief words from the noble Lord, Lord Kennedy, and the chairman of the Local Government Association. I should have made reference to the amendment tabled in Grand Committee and I endorse what my noble friend Lord Porter said about my noble friend Lady Cumberlege who has, in a sense, been the conscience of the Committee and the House in the progress of this important legislation. Even though she did not speak on this occasion, I rather felt that the spirit was moving within her. I am extremely grateful. I hope that between now and Third Reading, we can find a way forward. On the basis of what my noble friend said, I am hopeful that that will be the case. I recognise the needs of the Government and of the country as much as anyone else.

With that, I guess I ought to be away to the council meeting. I hope that the House will not be offended if I go off to attend a meeting. The budget is not presented by the leader in my local authority but by my deputy, who is in his mid-80s and about to marry again in July. He is well able to see off a Liberal Democrat and Labour challenge should there be one. I will not break up the sense of unity that we have had around the House. I am grateful for the support from all sides and to the Front Bench, and specifically for my noble friend Lord Bourne's role in all of this. I look forward to positive talks between now and Third Reading. With that, I beg leave to withdraw the amendment.

Amendment 38B withdrawn.

Amendments 39 and 40 not moved.

Clause 16: Procedure for authorising temporary possession etc

Amendment 41

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

41: Clause 16, page 16, line 30, leave out subsection (2) and insert—

"(2) The temporary possession of the land must be authorised by the type of instrument (the "authorising instrument") that would be required if the acquiring authority proposed to acquire that land compulsorily for the purposes for which it proposes to take temporary possession of that land."

Lord Young of Cookham (Con): My Lords, the co-pilot is back in charge and I am hoping for a smoother flight than the one I had on Thursday, when I encountered some turbulence as we flew over Clause 13. I listened with some interest to the debate we just had as a former councillor of the south London Borough of Lambeth; that was a very long time ago. We now move on to Part 2 of the Bill and amendments to the compulsory purchase provisions. Noble Lords will have noted that there are a large number of government amendments. These are mainly to ensure that the temporary possession provisions in the Bill work as intended and are fair to all, but they also respond positively to issues raised by noble Lords in Committee.

Amendments 41 to 43 amend Clause 16, which sets out the procedure for authorising temporary possession. In Grand Committee the noble Baroness, Lady Parminter, spoke eloquently to the amendment tabled by the noble Baroness, Lady Andrews, and herself about the need to ensure that land held inalienably by the National Trust is appropriately protected in the context of the new temporary possession power. As I indicated we would, the Government have considered the matter further, and I am happy to tell both noble Baronesses that we are now in agreement that the special interest of inalienable National Trust land, and its irreplaceable nature, requires particular protection.

Amendment 42 is the principal amendment in this group. It makes provision for any inalienable National Trust land which is required temporarily to be subject to the same additional protection as National Trust land which is to be acquired by compulsion. This means that where the National Trust sustains an objection to the taking of temporary possession of any of its inalienable land, the authorising instrument will be

[Lord Young of Cookham]
subject to special parliamentary procedure, in the same way as it would if the land was being acquired by compulsion.

The other amendments are technical and consequential. Amendment 41 clarifies that temporary possession must be authorised by the same type of instrument as would have been used if the land in question had been compulsorily acquired for the same purposes for which temporary possession is needed. Amendment 42 works by an exception to Clause 16(3)(c), which provides that where an authorising instrument authorises temporary possession then, for the purposes of the procedures for authorising and challenging it, temporary possession is treated in the same way as compulsory acquisition. Amendment 42 is therefore drafted so that it disapplies special parliamentary procedure for special kinds of land except for National Trust land held inalienably. As confirmed in the Government's policy paper published in December 2016, special kinds of land other than National Trust land will be subject to the serious detriment test in the temporary possession regulations made under Clause 26. Amendment 43 clarifies Clause 16(3)(c) by removing a potential ambiguity allowing the clause to be interpreted in two different ways.

I now move to Clause 17 and Amendment 45. In Grand Committee, the noble Lord, Lord Shipley, raised the issue of whether there would be a time limit on acquiring authorities exercising their power of temporary possession after it had been authorised. This is an important matter and I am grateful to the noble Lord for raising it. Amendment 45 addresses the issue by providing that acquiring authorities must serve a notice of intended entry within three years from the date on which the compulsory purchase order authorising temporary possession becomes operative. Where temporary possession is authorised by a different type of authorising instrument—for example, a development consent order—the time limit for serving the notice of entry is within five years of it becoming operative. These limits are in line with those where land is being acquired by compulsion.

Amendments 47, 50, 50A, 50B, 50C, 51, 52 and 61A deal with the power to override easements and other third-party rights over land taken for temporary possession. Where land is taken by compulsion, acquiring authorities have this power, which is necessary to ensure that there are no impediments to the scheme going forward. These third-party interests are typically rights to allow underground services such as water, gas, electricity and telecommunication belonging to one property to pass beneath the land of neighbouring properties; there are also rights of light and of way and covenants restricting development to certain uses or density. Land needed for a temporary period may also be subject to easements or restrictive covenants, so to avoid problems such as those with insurance or litigation it is necessary for acquiring authorities to have the power to override these rights when they take temporary possession of land. That is what these amendments do. The provisions are modelled on the corresponding provisions for schemes where land is acquired by compulsion as set out in Sections 203 and 205 of the Housing and Planning Act 2016. Amendment 51 is the principal amendment, as it contains the power to override a relevant right or interest. Amendment 47 sets out the compensation provisions.

6.15 pm

I come now to the four starred amendments. Noble Lords will have observed that the Government have withdrawn Amendments 44, 46 and 61 from the Marshalled List, and these four amendments are consequential on the withdrawal of Amendment 44. For the Government to withdraw three amendments and table four consequential amendments the day before Report is unusual, and I apologise to the House for that.

Amendment 44 would have required the acquiring authority to serve a notice of intended entry on those who own land subject to easements and other third-party interests, as well as those who have an interest in or a right to occupy the land. Amendments 50A and 61A replace Amendments 46 and 61. Amendment 50B is required to amend the advance payment provision in Clause 21 because, as currently worded and in the absence of Amendment 44, third-party right owners would not be able to claim an advance payment of compensation. This would clearly be unfair to them and should be corrected. Amendment 50C is consequential on Amendment 50B. I hope I have been able to reassure the House that these late amendments are minor in scope and will ensure that the temporary possession process mirrors the compulsory purchase process on this small but important point.

Amendment 52 provides protection for statutory undertakers and National Trust land and this corresponds to the provisions in Section 203 of the Housing and Planning Act 2016. Amendment 50 is consequential.

Amendments 48 and 49 relate to the compensation provisions for temporary possession. The noble Lord, Lord Shipley, tabled an amendment in Grand Committee seeking to remove subsections (3) to (6) of Clause 20. In responding to that amendment I indicated that the Government would discuss the issue further with the Compulsory Purchase Association. Those discussions have happened and I am pleased to say we have reached an agreed position. Amendments 48 and 49 delete subsections (3) and (4) of Clause 20, which require the value of the leasehold interest in the land for the period of temporary possession to be taken into account in calculating the amount of compensation due to a claimant. Expert practitioners have advised that taking into account this interest for this period may not be relevant in all cases. Saying it should be taken into account is, therefore, likely to lead to confusion and may cause unnecessary disputes about how the leasehold value is to be assessed.

The key point in this is that a claimant will be compensated for any loss or injury they sustain as a result of the temporary possession, as set out in Clause 20(2). We consider that the Upper Tribunal can assess loss or injury perfectly well by applying the established common-law principle that losses must be reasonably incurred and subject to the principles of causation, remoteness and mitigation, without being required to take into account something that may be irrelevant in a given case. We consider subsections (5)

and (6) of Clause 20 to provide useful clarification to the compensation provisions concerning disturbance compensation and have therefore retained those subsections.

Finally, on temporary possession, we have a number of amendments which deal with the recommendations of the Delegated Powers and Regulatory Reform Committee concerning the regulation-making power in Clause 26. As I said in Grand Committee, we take the committee's recommendations very seriously. We have, therefore, given further careful consideration to these matters and discussed them again with key stakeholders. I am pleased to inform the House that we agree completely with the committee's recommendations in respect to the reinstatement of land subject to temporary possession. Amendment 53, therefore, places an obligation on the Secretary of State and Welsh Ministers to make regulations providing for the reinstatement of temporarily possessed land and for the resolution of disputes about reinstatement by an independent person.

Amendment 57 removes the previous reinstatement provision in Clause 26(2)(i), which is no longer required as a result of Amendment 53. Amendments 54 to 56 respond to the committee's recommendation on Clause 26(2)(a). This subsection states that the Secretary of State or Welsh Ministers may make regulations to exclude or modify the temporary possession provisions in the Bill in particular cases or types of cases. The Delegated Powers Committee thought that this subsection was too wide and should be redrafted to reflect the narrow policy intention set out in the Government's policy paper. We highlighted in the policy paper that development consent orders under the Planning Act 2008, and orders under the Transport and Works Act 1992 and Harbours Act 1964, can modify or exclude a statutory provision which relates to any matter for which provision has been made in the order, but that there is currently no corresponding power under the Pipe-lines Act 1962 or the Gas Act 1965.

Having now explored this issue further with stakeholders, we have discovered that the Pipe-lines Act 1962 and the Gas Act 1965 are not the only examples of legislation which do not contain the corresponding power to modify or exclude statutory provisions relating to matters for which provision has been made in the order or authorisation. We understand the committee's concern that the power to exclude provisions, as drafted, could be used more widely. Amendments 54 and 55 therefore remove the general power to exclude or modify in Clause 26(2)(a) and limit the power to exclude provisions to the Pipe-lines Act 1962, Gas Act 1965, Gas Act 1986 and the Electricity Act 1989. However, we consider that there is a need to retain a general power to make limited modifications that appear necessary or expedient for giving full effect to the temporary possession provisions. For example, in some cases it may be appropriate to modify the time limit within which notice of intended entry must be served. Amendment 56 amends Clause 26(2)(b) to allow for this. Amendments 70 and 73 are consequential on Amendments 53 and 54.

Another recommendation from the Delegated Powers Committee was that Clause 26 should be amended to include a requirement that interested parties should be consulted before any temporary possession regulations are made. It has always been our intention to consult on the detail of the regulations before they were made. Amendment 58 demonstrates that the Government are therefore fully content to agree to the committee's recommendation to include in the Bill a requirement that interested parties should be consulted before any temporary possession regulations are made.

Moving away now from temporary possession, I turn to Clause 29 and Amendment 62. New Section 6A of the Land Compensation Act 1961, in Clause 29, will set the rules by which the no-scheme world is defined. This is the world in which compensation for compulsory purchase falls to be assessed, and this amendment deals with no-scheme Rule 4. In Grand Committee the noble Lord, Lord Shipley, argued that Rule 4 is unnecessary and should be omitted. In responding, I said that we would discuss the matter further with the Compulsory Purchase Association. These discussions have now taken place and I am pleased to inform the House that the Government and the Compulsory Purchase Association agree that Rule 4 serves a useful function and should be retained.

Rule 4 was thought to duplicate no-scheme Rule 3 but, in disregarding other schemes that could be brought forward only by,

"the exercise of a statutory function or … compulsory purchase powers",

Rule 4 performs a different function to Rule 3. Rule 4 comes into play when the same land is subject to two statutory schemes: an example would be those of the Olympic Park and Crossrail. Where land would be taken for the Olympic Park, that scheme is assumed to be cancelled, applying Rule 1. It is then assumed that there would be no other scheme to meet the same need, applying Rule 3. Applying Rule 4 assumes that no other public scheme would come forward; this allows the blighting effect of Crossrail to be disregarded as well, thus creating a fair no-scheme world for claimants.

I should mention here that a question has been raised by the noble and learned Lord, Lord Walker of Gestingthorpe, who is in Hong Kong and so unable to be in his place, about a possible tension between no-scheme Rule 4 and Section 14 of the Land Compensation Act. Having carefully considered his question and discussed this with expert practitioners, we are satisfied that there is no tension between Rule 4 and Section 14. I shall therefore write in detail to him and place a copy of the letter in the Library.

Amendment 62 adopts a conceptually different approach for what the valuer must do in applying Rule 4, to be consistent with the conceptual approach adopted for no-scheme Rules 1 to 3. It changes it from a negative into a positive action—from,

"no consideration of whether other projects would have been carried out",

to an active assumption that,

"it is to be assumed that no",

other projects would have been carried out. Amendment 62 therefore brings no-scheme Rule 4 into line with the conceptual approach used for no-scheme Rules 1 to 3, which use the same formulation.

[LORD YOUNG OF COOKHAM]

I am sure that the House will be pleased to know that we are now nearing the end. Perhaps I may tell noble Lords that this speech is a lot shorter than it was originally. Amendment 63 is the Government's final amendment to Part 2. It is a minor and technical amendment to correct an omission in Clause 33, which inserts new Sections 403A and 403B into the Greater London Authority Act 1999. It ensures that new Section 403B is treated in the same way as new Section 403A for the purposes of paragraph 20 of Schedule 11 to that Act. I beg to move government Amendment 41.

Lord Beecham: My Lords, this speech will be shorter than that given by the noble Lord, Lord Young, and this speaker is, of course, somewhat shorter than him. I congratulate him on incorporating the two amendments which I had intended to move, Amendments 59 and 60, although I note that there was no attribution in his speaking on the matters which substantially cover them. Nevertheless, I am grateful to him for his clear exposition of all these amendments, for the adoption of the two that I would have spoken to and for clearly listening to the comments, criticisms and suggestions from around the House. I am happy to endorse those matters and I will not move the amendments in my name.

Lord Shipley: My Lords, I thank the Minister for all that he said about compulsory purchase, both temporary and non-temporary. I think that his comments demonstrate the role of scrutiny and the value of this Chamber. I had a great deal to say on compulsory purchase in Committee but now I have virtually nothing at all to say because the matter has been resolved. It demonstrates the importance of talking with expert practitioners. Perhaps I should also repeat what I said in Committee about the large number of government amendments regarding compulsory purchase although the Bill had come to us from the House of Commons as a finished Bill. In this respect at least—but also on the planning side, as we know—it did not merit the status of a finished Bill. However, I am grateful to the Minister and his colleagues in the department for all the work that they have done. As far as I am concerned, we now have a Bill—assuming that all the amendments are adopted—that will make the statutory position a great deal clearer. I shall say something further when we come on to the question of Henry VIII powers, because some powers will still apply to this part of the Bill. For the moment, however, I have nothing further to add.

6.30 pm

Lord Campbell-Savours (Lab): My Lords, I was unfortunately unable to attend the Committee stage on the Bill because it clashed with other meetings. However, I want to use government Amendment 62 to raise an issue that, from what I have heard, was not dealt with in Committee.

I want to go back to the debate that took place on 17 March 2016, when the noble Viscount, Lord Younger of Leckie, commented on this whole question of the no-scheme world. Perhaps I may read out what he said and then ask some questions about how we should interpret it. He said that the compensation code—which, as I understand it, is dealt with under Amendment 62—

"is underpinned by the principle of equivalence. This means that the owner should be paid neither less nor more than his loss. The code provides that land shall be purchased at its open market value, disregarding the effect of the scheme underlying the compulsory purchase".

I think that that is what the noble Lord, Lord Young, was referring to, and it is a question of rules. The noble Viscount continued:

"The land is valued in a construct called the 'no-scheme world', whereby any increase or decrease in value which is due to the scheme is disregarded. Land will always have its existing use value but market value also takes into account the effect of any planning permissions that have already been granted, and also the prospect of future planning permissions".

He goes on to talk about "hope value", and then says:

"In some situations there will be no hope value, because the individual claimant could not have obtained planning permission for some more valuable use. For example, the land might be in an isolated rural location where permission for development would have been unlikely to be granted".—[*Official Report*, 17/3/16; col. 2040-41.]

In other words, as I understand that, there is provision within the law whereby we can acquire land at a very low price, depending on what the ultimate use of the land will be.

What I cannot quite get my head around is why, if that is the case, we cannot buy land for housing on that basis. Why cannot we buy land for housing on the same basis as we buy land for airports, motorways, bypasses, railways, reservoirs and other utility uses, and then build housing developments on that land? It could be acquired at a very low price, probably something like £8,000 or £10,000 a plot on which to build, as against often spending £50,000, £100,000 or £200,000 for a plot of land.

On this sort of housing use, Section 226 of the land compensation Act 1965, as amended by Section 99 of the Planning and Compulsory Purchase Act 2004, sets out conditions for applying for a compulsory purchase. It must aim for,

"the promotion or improvement of the economic well-being of their area"—

or,

"the promotion or improvement of the social well-being of their area".

Therefore it is defined in the law that where there is an acquisition for improvements in social well-being, a CPO can be used. So why cannot we use that procedure for acquiring land at a low price to build the hundreds of thousands, if not potentially millions, of houses that are going to be needed here in the United Kingdom?

I go back again to the argument that I have used repeatedly in the House. I do not want to bore noble Lords, so I will put it simply: there is a difference in the cost of land in United Kingdom. You can buy land around the London area—agricultural land—at £20,000 to £25,000 an acre which, at a stroke of a planner's pen, is worth £4 million or £5 million per hectare. If that is the case, it is the community that has increased the value of that land, not the landowner. Therefore, it is the community that should see the benefit of that land. If the community is to see the benefit of that land,

it potentially means that we could create cheaper housing for thousands, or perhaps even millions, of people. We somehow do not do that, because we are always protecting the land value, which is only to the benefit of the people who own the land. I cannot understand why, if we have provisions in the law like this, which allow for the acquisition of land, we do not use them. We have a judgment from Lord Denning where he says that,

"Parliament only grants it, or should only grant it, when it is necessary in the public interest".

It is in the public interest to acquire cheap land to provide housing for people in the United Kingdom. I have used this amendment as a peg, and I ask Ministers once again: why cannot we proceed on the basis that I keep advocating in this Chamber?

Baroness Parminter: My Lords, I sincerely thank the Minister for the consideration that he and the ministerial team have given to the comments and concerns that I raised in Committee. I offer those thanks on behalf of myself and the noble Baroness, Lady Andrews, who is no longer able to be in her place. In particular, I welcome Amendments 42 and 55, which specifically address the concerns that we had about the impact of the temporary possession proposals on the special land that the National Trust holds for the good of the nation. I am delighted with the way that the Minister has retained the status quo for the National Trust's inalienable land. I thank him most sincerely.

Lord Young of Cookham: I am grateful to all noble Lords who have taken part in this debate, particularly to those who welcomed the amendments tabled by the Government to meet concerns expressed earlier on.

If I may respond briefly to the very important issues raised by the noble Lord, Lord Campbell-Savours, no one is more anxious than I am to see more houses being built. In view of his interest, he might like to come along on Thursday, when we have a debate on the White Paper, which will be a broader debate about housing. I will make three quick points about the question that he raised. First, Clause 29, the no-scheme principle, makes no fundamental changes to the principle of compensation. It seeks to clarify where we are by looking at past cases and setting out some clear rules, Rules 1 to 5, so that we can, in future, fairly assess the compensation that people are entitled to if they are affected by a CPO.

The second point, which really arises from that, is that we have always paid the market value. For as long as I have been involved in this type of legislation, when somebody's land or property has been acquired, we have always paid the market value. That is the right thing to do in a fair society; otherwise, one is verging towards confiscation. If you are going to take away something at less than its value from an individual who does not want to part with it, that is approaching what could be called confiscation.

Lord Campbell-Savours: The Minister talks about its value, but its value prior to the planner signing it off and designating it as land for housing is agricultural. That is what it is.

Lord Young of Cookham: The compensation is based on the existing use value. Sometimes that might have a hope value, and in some of the circumstances he has outlined, it might not be zoned for housing, but the market value might be slightly above agricultural value because of so-called hope value. That gets priced in. The important point is that we pay market value. What the noble Lord wants to do is to acquire it at below market value to facilitate the building of more houses. I understand that, but that is not the principle on which people have been compensated for the last 40 or 50 years; they have always had the market value.

Thirdly, the no-scheme principle says that if the value of your property has suddenly gone up because of something that the public sector is building—a station or whatever—then that is disregarded for the purpose of assessing its value. That is what we do: that is what the no-scheme principle implies, so you do not get the benefit of the public investment that has accelerated the value of your land. I hope that I have satisfied the noble Lord. Although he is smiling, I suspect that I might not have. On the rather slender hook of Amendment 62, he has hung a very substantial debate, perhaps more appropriate to the Second Reading of this Bill many months ago. Of course, however, I would be happy to have further discussions with him if he has any continuing concerns about how land is acquired compulsorily.

Amendment 41 agreed.

Amendments 42 and 43 agreed.

Amendment 44 had been withdrawn from the Marshalled List.

Clause 17: Notice requirements

Amendment 45 agreed.

Amendment 46 had been withdrawn from the Marshalled List.

Clause 20: Compensation

Amendment 47 to 50A agreed.

Clause 21: Advance payments

Amendments 50B and 50C

Moved by ***Lord Bourne of Aberystwyth***

50B: Clause 21, page 19, line 38, leave out "to the claimant" and insert "in relation to the land in respect of which the claimant is or will be entitled to compensation"

50C: Clause 21, page 19, line 40, leave out "a notice of intended entry to the claimant" and insert "such a notice"

Amendments 50B and 50C agreed.

Clause 24: Powers of acquiring authority in relation to land

Amendments 51 and 52

Moved by ***Lord Bourne of Aberystwyth***

51: Clause 24, page 22, line 27, at end insert—

"( ) The acquiring authority may use land as described in subsection (1) even if this involves—

(a) interfering with a relevant right or interest, or

(b) breaching a restriction as to the user of land arising by virtue of a contract."

52: Clause 24, page 22, line 30, at end insert—

"(4) Nothing in this section authorises an interference with—

(a) a right of way on, under or over land that is a protected right, or

(b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.

(5) Nothing in this section authorises—

(a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or

(b) a breach of a restriction as to the user of land which does not belong to the National Trust—

(i) arising by virtue of a contract to which the National Trust is a party, or

(ii) benefiting land which does belong to the National Trust.

(6) For the purposes of subsection (5)—

(a) "the National Trust" means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and

(b) land is held by the National Trust "inalienably" if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.

(7) In this section—

"protected right" means—

(a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or

(b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);

"statutory undertaker" means a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990;

"statutory undertaking" is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of "statutory undertakers")."

Amendments 51 and 52 agreed.

Clause 26: Supplementary provisions

Amendments 53 to 58

Moved by ***Lord Bourne of Aberystwyth***

53: Clause 26, page 23, line 16, at end insert—

"(A1) The appropriate national authority must by regulations make provision about—

(a) the reinstatement of land subject to a period of temporary possession, and

(b) the resolution by an independent person of disputes about reinstatement."

54: Clause 26, page 23, line 16, at end insert—

"(A2) The Secretary of State may by regulations exclude the application of any provision of this Chapter in relation to a person who is an acquiring authority as a result of an authorisation by virtue of—

(a) section 11, 12 or 12A of the Pipe-lines Act 1962 (compulsory purchase of land or rights over land in connection with pipe-lines),

(b) section 12 or 13 of the Gas Act 1965 (compulsory purchase of rights in relation to storage of gas etc),

(c) paragraph 1 of Schedule 3 to the Gas Act 1986 (compulsory purchase of land by gas transporter), or

(d) paragraph 1 of Schedule 3 to the Electricity Act 1989 (compulsory purchase of land by licence holder)."

55: Clause 26, page 23, line 25, leave out paragraph (a)

56: Clause 26, page 23, line 29, at end insert "including by modifying that provision so that it is effective in relation to those cases or types of case,"

57: Clause 26, page 23, line 45, leave out paragraph (i)

58: Clause 26, page 24, line 3, at end insert—

"( ) Before making regulations under this section the Secretary of State or the Welsh Ministers, as the case may be, must carry out a public consultation."

Amendments 53 to 58 agreed.

Amendments 59 and 60 not moved.

Amendment 61 had been withdrawn from the Marshalled List.

Clause 27: Interpretation

Amendment 61A

Moved by ***Lord Bourne of Aberystwyth***

61A: Clause 27, page 24, line 16, at end insert—

""relevant right or interest" has the meaning given by section 20(11)."

Amendment 61A agreed.

Clause 29: No-scheme principle

Amendment 62

Moved by ***Lord Bourne of Aberystwyth***

62: Clause 29, page 25, line 17, leave out "there is to be no consideration of whether" and insert "it is to be assumed that no"

Amendment 62 agreed.

Clause 33: GLA and TfL: joint acquisition of land

Amendment 63

Moved by ***Lord Bourne of Aberystwyth***

63: Clause 33, page 32, line 45, after "403A" insert ", 403B"

Amendment 63 agreed.

Amendment 64

Moved by ***Lord Bourne of Aberystwyth***

64: After Clause 38, insert the following new Clause—

"CHAPTER 3

CONSEQUENTIAL PROVISION

Consequential provision

(1) The Secretary of State may by regulations make provision in consequence of any provision of this Part.

(2) Regulations under subsection (1) may amend, repeal or revoke any enactment.

(3) In subsection (2)"enactment" includes—

(a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and

(b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales."

Lord Bourne of Aberystwyth: My Lords, I will speak collectively to government Amendments 64, 72, 76, and 77. I listened carefully to the concerns raised during Grand Committee and am grateful to the noble and learned Lord, Lord Judge. He is not in his place but was most generous with his time in meeting with me between Committee and Report to discuss the matter further. I know that other noble Lords have focused on this area: the noble Lords, Lord Pannick, Lord Kennedy and Lord Beecham, and my noble friend Lady Cumberlege have all raised concerns on this.

These government amendments narrow the scope of the consequential power in Clause 40 to apply it to only Part 2 of the Bill—the part related to compulsory purchase and not the part related strictly to neighbourhood plans. We expect it to be most needed in relation to compulsory purchase and therefore have responded to concerns raised in Grand Committee.

The Government have also ensured that the new consequential power which applies to Part 2 of the Bill allows provision "in consequence of this Bill", rather than provision which the Secretary of State,

"considers appropriate, to be made in consequence of this Bill".

This change of words may appeal to those who thought that the original language was too subjective.

I do not wish to pre-empt any points that noble Lords may wish to make on this but I do want to address the concerns raised. We have responded to those concerns and significantly narrowed the scope of this provision in the Bill. I beg to move.

Baroness Cumberlege (Con): My Lords, I declare an interest. As noble Lords are aware, I have a legal case pending. I took advice from the Clerk of the Parliaments and was told that the sub judice rule does not apply in my case. My other interests are in the Lords register.

I am very grateful to my noble friend Lord Bourne for adding his name to my Amendment 68. As he explained, it will delete the Henry VIII clause pertinent to the compulsory purchase and compensation part of the Bill and will narrow the scope of this clause. We had a robust debate in Committee and I was extremely grateful to the noble and learned Lord, Lord Judge, for speaking to the amendment there with such lucidity, force and wisdom. Again, he put his name to my amendment here but sends his apologies to the House because he has a long-standing engagement.

I am delighted that the noble Lord, Lord Pannick, is here this evening and will support the amendment, as will the redoubtable noble Lord, Lord Kennedy. Best of all, my noble friend Lord Bourne, the Minister, put his name to the amendment as well. I am sure that, having reached this agreement, he put in a huge amount of time and energy in negotiating to achieve what we have achieved this evening.

6.45 pm

I am very much aware that we are nearing the end of Report. If noble Lords will forgive me, I will say a few words about the use of Henry VIII clauses that come to this House and to the other place. They can be a recipe for sloppy drafting. Sometimes it is easier to introduce a Henry VIII clause than to think through an issue with great clarity before it is brought to the House. We have had a procession of planning Bills and a lack of coherent policies.

Sometimes, if noble Lords will forgive me, I have a vision of Sir Humphrey Appleby in the Department for Communities and Local Government. "Of course, Minister, the Bill is not perfect. In an age of rapid change, we cannot cover every eventuality. But with a Henry VIII clause we can just tweak a few of the sections that aren't quite right in line with what is required, without going to the trouble of parliamentary scrutiny". "But Humphrey, that is not democratic". "That is up to you, Minister. But do you really want to go through the whole process again with that intolerable Baroness Cumberlege and her interminable questioning of clauses and sections? You look tired, Minister. You need to lead a balanced life". "True, Humphrey. Democracy has its limitations".

Fortunately, my noble friend is not Jim Hacker. He has unquestioned integrity and has been selfless in the pursuit of getting what is right for this legislation, for planning as a whole and for the country. The planning laws are very many and they are pretty impregnable. We have one amending another—inserting, deleting, referring back and almost certain to confuse. Again, I can hear Sir Humphrey: "I know, Minister, but making it clear is not the purpose of the Act. With a Henry VIII clause, if we can get that through Parliament, we could change it to confuse planning authorities. That way, you can do as you want and maintain a work/life balance". Fortunately, we do not have any Sir Humphrey Applebys in the Department for Communities and Local Government.

In conclusion, I hope that every Member of this House will be diligent, search the furthest corners of each Bill for Henry VIII clauses, challenge them and instigate debates to have them removed—or partially removed. In this case, it is a partial removal. I understand the reasons for that and I think that they are legitimate. After all, we have just been through 24 different amendments to the Bill to ensure that the compensation and compulsory purchase remit for the future is right. But, in the longer term, we need some clearer thinking and to concentrate on strategy rather than minutiae. We need time to consolidate legislation, to make it

[Baroness Cumberlege]
more comprehensible to those of us—I include myself—who have to wrestle with hundreds of interconnecting clauses in many disconnected Acts of Parliament.

I do not want to be ungracious. I thank my noble friend Lord Bourne for doing what is unquestionably right and for his enormous diligence, patience, courtesy, integrity and graciousness—a term used earlier in the debate—throughout this and earlier stages of the Bill. I am delighted that he debated this with the noble and learned Lord, Lord Judge, and saw fit to add his name to this amendment, which deletes Clause 40.

Lord Pannick (CB): My Lords, I am pleased that the Minister has wisely responded to the concerns expressed by the noble Baroness, Lady Cumberlege, the noble and learned Lord, Lord Judge, and others. I congratulate her on her efforts and successful attempts to draw attention to the mischief of Clause 40. In its original form, it was a manifestly unacceptable provision —indeed, a quite extraordinary clause. I remind your Lordships that it said that by regulations the Minister may "make such provision" as the Minister,

"considers appropriate in consequence of any provision of this Act",

and that the provision that the Minister may make included amending, repealing or revoking any enactment —any primary or secondary legislation.

Your Lordships' Constitution Committee, of which I am a member, has regularly drawn attention to the constitutional impropriety of such broad Henry VIII clauses. Clause 40 should never have been tabled in that form. I added my name to Amendment 68 in the name of the noble Baroness, Lady Cumberlege, which would leave out that clause, because of my concern at the constitutional impropriety. The noble and learned Lord, Lord Judge, added his name for the same reason, as he explained in Grand Committee.

The wording in the amendment is much more acceptable. As the Minister indicated, it is confined to consequential regulations, not regulations that are, in the view of the Minister, appropriate in consequence of the Act. I have no doubt that a court would hold Ministers to that objective test. The new wording is also confined, as he said, to provisions consequential on this part of the Bill.

I am therefore grateful to the Minister for tempering the wish of the Executive to take broad powers to amend primary legislation. I hope he will communicate to his ministerial colleagues that noble Lords are focused on this subject and that if Ministers again bring forward broad Henry VIII clauses such as Clause 40, we will put down amendments and, if necessary, divide the House.

Lord Shipley: My Lords, I add my thanks to the Minister for the proposed changes. The noble Lord, Lord Pannick, has said what I was going to say and I will not repeat it. The change of wording in the amendment is significant because, as he indicated, it is no longer the case that the Secretary of State has the power to consider something "appropriate". Rather, he can make provision in consequence of any provision in this part of the Bill. This is much better. Henry VIII powers should never have been applied to the planning chapters of the Bill.

I said earlier that compulsory purchase is indeed complicated and I accept that consequential provision may be needed, which can be taken quickly if there is found to be a further flaw in the legislation that Parliament passes. That said, I seek the Minister's confirmation that the wording now being used in relation to compulsory purchase is the standard wording used in other Bills. It has been said that there is a power in recent planning Acts for Ministers to make consequential provision. We need to be clear about that and that we are not doing something in the amendment that has not been in any other Bill or Act. I understand that to be the position but would be keen to hear the Minister confirm that there is nothing unusual in the wording of the amendment.

Lord Beecham: My Lords, I join other noble Lords in thanking the Minister and, indeed, in congratulating him on these substantive changes, which are ultimately, I suppose, a concession to the powerful arguments advanced, in particular by the noble and learned Lord, Lord Judge, and by the noble Lord, Lord Pannick, and other Members across the House.

It would have been good to see a similar approach from Ministers when we discussed the Housing and Planning Bill at great length last year. It is not a personal criticism of them; the Minister at that time, the noble Baroness, was not allowed to move in the direction in which Ministers on this Bill have been able to move, which I very much welcome.

For clarification, may I assume that my Amendments 71 and 75 are effectively covered by the welcome amendments that the Government have brought forward? That is right, and that is a repetition in the case of the previous amendments. However, I am not entirely clear about Amendment 67 in my name, which requires the Secretary of State to consult the Welsh Ministers before making regulations under Section 38. That proposal was dismissed on the previous occasion, although it had been a matter of strong concern to the Delegated Powers and Regulatory Reform Committee, to which the Government's official response was extremely negative. I do not know whether the Minister can offer any assurance that, whether or not is contained in the amendment, the Government will consult Welsh Ministers. There was rather a general statement that this happens automatically. The purpose of including it in the Bill was to make sure that more than just custom and practice would apply in this case. It would therefore be helpful if the Minister indicated whether the government amendments cover my amendment or, in the event that they do not, whether he will again confirm explicitly that there will be consultation with Welsh Ministers before making regulations under Section 38. It would be preferable to include that in the Bill but, at the very least, a ministerial assurance would carry some weight. In those circumstances, if that were the position, I would withdraw my amendment.

Lord Bourne of Aberystwyth: My Lords, perhaps I may respond, particularly to the points raised by the noble Lord, Lord Beecham, in relation to Wales. I will pick them up at the end of this part of the review of other noble Lords' amendments. I once again thank those who have participated in the debate, including

my noble friend Lady Cumberlege, who set out a horrifying "Yes Minister" position. I am sure that one or two officials in our department will be listening but it is not regarded there as a training manual—although it possibly is the case in other departments. However, I give fair warning to anybody who thinks it is that it is not. The point was well made.

I am grateful for the welcome given by the noble Lord, Lord Pannick, to the position exhibited in the government amendments, as well as by the noble Lords, Lord Beecham and Lord Shipley. It was certainly the subject of my fruitful discussion with the noble and learned Lord, Lord Judge, who was instrumental in putting a strong case.

I confirm to the noble Lord, Lord Shipley, that the wording is the usual wording. I hope he is reassured by that.

7 pm

I think we have responded. As a lawyer I understand the concerns, so I was very keen that we responded positively. We have sought to restrict the power to the area where we will need it for reasons that I am pleased noble Lords appreciate. We have also slightly altered—perhaps significantly altered in a few words—some of the wording.

The view of experts is that the position as now set out in the legislation will be construed very strictly against those seeking to rely on it—that is, potentially, the Government. That is enforced by *Craies on Legislation*: *A Practitioner's Guide to the Nature, Process, Effect and Interpretation of Legislation*. It provides that consequential provision,

"will be construed strictly against the legislature".

This passage goes on to state that provision made in reliance on the power,

"will be strictly tested to determine whether it can fairly be presented as a mere consequence (whether absolutely necessary or clearly desirable) of the principal provisions".

In the event that the power is used to amend or repeal a provision of an Act of Parliament, or a Measure or Act of the National Assembly for Wales—so, in answer to the point raised by the noble Lord, Lord Beecham, in relation to this general provision, it will apply to measures in relation to Wales as well, although I will deal with his specific point shortly—it will need to be approved by each House of Parliament before it can be made by affirmative resolution.

It may assist noble Lords if I quickly provide an example of how the power is most likely to be used. We need to make sure that the new powers to take temporary possession of land, for example, can be conferred under all the numerous Acts which enable compulsory purchase powers to be conferred. We hope to do that by the time the Bill is passed, but that may not prove possible. That may entail amendments which may not be considered minor in the strict sense of the word but go beyond merely updating cross-references.

I understand the depth of feeling about this provision and hope that with the assurances made by my amendments, particularly the significant narrowing in the scope of the power, my noble friend and noble Lords will not move their amendment.

Amendment 67 is tabled in the name of the noble Lord, Lord Beecham. It seeks to require the Secretary of State to consult Welsh Ministers before making any regulations which amend legislation in consequence of this Bill. There was a perhaps slightly unsatisfactory discussion of this in Committee, for which I share some of the blame. This happened in relation to the then Wales Bill very recently. I was seeking to say—perhaps I did not do so elegantly, and I certainly did not seem to get the message across—that, mutatis mutandis, we would apply it in the same way here. That is, as soon as we know of regulations that we need to make in this direction, we would have an exchange of correspondence with, first, the First Minister in Wales, and, secondly, the Presiding Officer in Wales, so they would be notified at a very early juncture. I will ensure that once we have the exchange of correspondence, which we do not yet have, I will share—subject to Chinese walls of government departments—the exchange we had in relation to the Wales Act, because it will closely follow that. That is the intention, so I hope that noble Lords will accept that that is effectively consultation and that they would be able to object and raise concerns at that stage—although we will, in practice, have notified them at a much earlier stage and discussed it, as we have discussed this provision.

As I said during the passage of the Wales Bill, it is tempting to think that there is always conflict between the National Assembly for Wales and this Parliament. That is not the case, and it has got less so just because of the effluxion of time. Even with different parties in government here and in government there, it is largely a helpful, fruitful discussion. We would engage at an early stage in relation to things that I think would be minor. We would formalise in an exchange of correspondence. I hope that takes care of the noble Lord's concerns. I understand that he would prefer it in the Bill, but he has that assurance which will appear on the record, and that is the way that we have proceeded in relation to other legislation.

Amendment 64 agreed.

Amendment 65

Moved by ***Lord Kennedy of Southwark***

65: After Clause 38, insert the following new Clause—

"Amendment to TfL powers

In Schedule 11 of the Greater London Authority Act 1999 (miscellaneous powers of Transport for London) after paragraph 12 insert—

"12A_ Transport for London or any subsidiary of Transport for London may sell, exchange or lease its land for the purpose of providing housing of any description at such price, or for such consideration, or for such rent, as having regard to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration or rent might have been obtained if the land were sold, exchanged or leased for the purpose of providing housing of another description or for a purpose other than the provision of housing and for the purposes of paragraph 29 below Transport for London or any subsidiary of Transport for London shall not be required to act as if it were a company engaged in a commercial enterprise if undertaking any activities at paragraphs 15(2) or (3) below with a view to selling, exchanging or leasing its land under this paragraph."

Lord Kennedy of Southwark: My Lords, this is the last amendment on Report. We had a short debate in Grand Committee on 8 February. The amendments I tabled then and have tabled now are to help the discussion taking place between the department, the Government, Transport for London and the Greater London Authority in respect of the powers that those authorities think they need to dispose of land and help build more housing.

I am hoping the Minister will be able to respond to this and update us on where we have got to in discussions so far. I do not believe any agreement has been reached, as yet. I hope we are going to get somewhere and that we will not reach the end of this process with nothing having been agreed. That would be most disappointing. I got a fairly positive response from the Minister in Grand Committee. I will leave it there. I hope the Minister can respond positively and tell us that, although nothing has yet been agreed, the discussions are ongoing. We all hope that we will get some resolution before we reach the end of this process. I beg to move.

Lord Young of Cookham: My Lords, I am grateful to the noble Lord, Lord Kennedy, for the bridge-building way in which he moved the amendment. Amendments 65 and 66 seek to make new provision in the Greater London Authority Act 1999 which would amend the powers of Transport for London and the Greater London Authority to dispose of land.

Amendment 65 seeks to give Transport for London the flexibility to dispose of land for housing, even if a higher value use was available, provided the best consideration reasonably obtainable for housing use had been achieved. To achieve this, Amendment 65 would disapply the requirement for TfL to,

"act as if it were a company engaged in a commercial enterprise".

Amendment 66 would remove the requirement for the GLA to obtain the consent of the Secretary of State to the disposal of land for housing, even if a higher value use was available, provided the best consideration reasonably obtainable for housing use had been achieved.

In Grand Committee, I promised to facilitate a meeting between the Government, the GLA and TfL before Report to discuss how we should respond to the concerns the noble Lord had raised. I confirm that that meeting has taken place.

We have been working with TfL to assess the impact of making the proposed amendment, but unfortunately we remain concerned about the potential impact of Amendment 65 on TfL's overall receipts targets and consequently on public finances more generally. Given these ongoing concerns, I cannot accept the noble Lord's amendment, but I can assure him that the Government will continue to work with TfL to address those concerns and ensure that TfL is able to meet both its housing and its receipts targets.

On Amendment 66, the noble Lord will be aware that the Government made a commitment in the housing White Paper to consult on extending the ability of local authorities to dispose of land at less than best consideration without seeking consent to do so from the Secretary of State.

Land disposals by local authorities are governed by a separate regime from those undertaken by the GLA. I do not believe it would be right in this Bill to reduce the protections established by the current requirement for consent of the Secretary of State for disposals by the GLA at less than best consideration. The White Paper did not specifically reference this GLA consent requirement, but I reassure the noble Lord that the scope of the consultation announced in the White Paper will extend to the GLA consent regime.

With the reassurance that we will continue to work with TfL and the GLA to find appropriate solutions to the very real concerns the noble Lord has raised, I hope he will be prepared to withdraw the amendment so that we can end Report on a consensual note.

Lord Kennedy of Southwark: I am happy not to press my amendments at this stage, but will just say that I do not know whether these discussions are ongoing. Is the noble Lord suggesting that there may be some light and that this may come back at Third Reading or is he suggesting that it is more likely that this will be addressed in a White Paper? Or could it be either? Some clarification on that would be useful. Important points have been raised. The Mayor of London has specific targets for building homes in London, and we all want to see that happen—but if you want to get it done, these things need to be addressed. With that, I beg leave to withdraw the amendment.

Amendment 65 withdrawn.

Amendment 66 not moved.

Clause 40: Consequential provision

Amendment 67 not moved.

Amendment 68

Moved by ***Baroness Cumberlege***

68: Clause 40, leave out Clause 40

Amendment 68 agreed.

Amendment 69 had been withdrawn from the Marshalled List.

Clause 41: Regulations

Amendment 70

Moved by ***Lord Bourne of Aberystwyth***

70: Clause 41, page 36, line 12, leave out "26(1)" and insert "26(A1), (A2) or (1)"

Amendment 70 agreed.

Amendment 71 not moved.

Amendments 72 to 74

Moved by ***Lord Bourne of Aberystwyth***

72: Clause 41, page 36, line 13, leave out "40(1)" and insert "(Consequential provision)(1)"

73: Clause 41, page 36, line 16, leave out "26(1)" and insert "26(A1), (A2) or (1)"

74: Clause 41, page 36, line 23, leave out "40(1)" and insert "(Consequential provision)(1)"

Amendments 72 to 74 agreed.

Amendment 75 not moved.

Clause 42: Extent

Amendment 76

Moved by ***Lord Bourne of Aberystwyth***

76: Clause 42, page 36, line 40, leave out "This Part extends" and insert "Section (Consequential provision) and this Part extend"

Amendment 76 agreed.

Clause 43: Commencement

Amendment 77

Moved by ***Lord Bourne of Aberystwyth***

77: Clause 43, page 37, line 13, at end insert—

"( ) section (Consequential provision);"

Amendment 77 agreed.

Nursing and Midwifery (Amendment) Order 2017

Motion to Approve

7.11 pm

Moved by ***Lord O'Shaughnessy***

That the draft Order laid before the House on 25 January be approved.

Relevant document: 22nd Report from the Secondary Legislation Scrutiny Committee

The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con): My Lords, I am grateful to the noble Lord, Lord Hunt, for his interest in this matter, and although naturally I am disappointed by his amendment to the Motion, I will use the opportunity afforded by it to aim to reassure him and all noble Lords that the proposed changes in this order are consistent with the Government's commitment to strengthening the midwifery profession while also ensuring public protection. In addition, I am aware that the Secondary Legislation Scrutiny Committee has brought this order to the special attention of the House, and I will address the concerns of the committee in my remarks.

I know that the House will agree that it is vital for all women to be able to give birth in a safe, high-quality environment. This Government are committed to ensuring maternity services are the best and safest they can be. However, it is also true that things can and do go wrong, often with devastating impacts on mothers and babies but also on husbands, partners, parents, siblings and extended family members. Any good system of policy and regulation must promote best practice while also preparing to respond to mistakes when they happen.

In October 2016, *Safer Maternity Care* was published. It set out an action plan for the Government's vision to make NHS maternity services some of the safest in the world and to achieve our national ambition to halve, by 2030, the rates of stillbirths, neonatal deaths and brain injuries that occur during or soon after birth and maternal deaths, with an interim aim of a reduction of 20% by 2020. Midwives are key to achieving this ambition. Because of this Government's actions, there are more than 2,100 additional full-time equivalent midwives on our maternity units since 2010, and a further 6,300 are in training.

Midwives do a critically important job caring for mothers and babies and I pay tribute to the work that they do, which my family has been privileged to benefit from. However, when mistakes are made, it is right that they must be properly investigated. This order is before noble Lords partly in response to concerns raised during investigations into systematic failures in the care of mothers and babies at Morecambe Bay NHS Foundation Trust. As noble Lords know, following the completion of a number of investigations into complaints from families of those affected by the tragic events at Morecambe Bay, the Parliamentary and Health Service Ombudsman highlighted that,

"the midwifery supervision and regulatory arrangements at the local level failed to identify poor midwifery practice".

A subsequent report by the King's Fund described the system of local investigations as a "sub-FTP"—fitness-to-practise—"investigatory process", which,

"causes confusion … and can result in a lack of clarity for providers over their responsibility".

Similar concerns were raised in Dr Bill Kirkup's Morecambe Bay investigation report, which referenced the,

"remarkable conflicts of interest inherent in a single individual combining the roles of risk manager, supervisor of midwives, senior midwife and staff-side representative".

The report also stated that,

"the supervisory system as applied in Morecambe Bay … lacked objectivity and failed repeatedly to identify the evident problems in the unit or alert others to them".

All three reports that I have just quoted from recommended that urgent change was needed to ensure a clear separation between regulation and supervision of midwives.

7.15 pm

In large part to respond to the importance of improving safety and maternity services, this order makes a number of changes to the Nursing and Midwifery Council's governing legislation as the independent regulator for nurses and midwives across the UK. Specifically, the order will: remove the statutory system of supervision and local investigation that is unique to midwifery;

[Lord O'Shaughnessy]
remove the statutory requirement for the NMC to have a midwifery committee; and make changes to improve the efficiency, effectiveness and proportionality of the NMC's fitness-to-practise processes for both nurses and midwives.

My department publicly consulted on the measures set out in the order, receiving over 1,400 responses. Although the consultation highlighted concerns, in particular from within the midwifery profession, around the removal of both statutory supervision and the statutory requirement for a midwifery committee, this legislation is required to enhance patient safety, modernise the regulation of midwifery and improve fitness-to-practise processes for both nursing and midwifery. I will take each change in turn.

First, the principles of midwifery regulation are based on a model established in 1902, when midwives were working as independent practitioners. As part of the current statutory provisions, supervisors of midwives have a role in investigating and resolving fitness-to-practise concerns at a local level. This system of supervision and local investigation is unique to midwifery and there is a lack of evidence to suggest that the risks posed by contemporary midwifery practice require this additional tier of regulation. More significantly, given the findings of the reports I have referenced, I am confident that the separation of regulatory investigations from the supervision of midwives will be a positive step in enhancing public protection and will bring the regulation of midwifery into line with other regulatory practices.

To ensure that midwives continue to have access to support and development, the four UK countries, through their Chief Nursing Officers, have collaborated to develop new, non-statutory models of supervision that will deliver these elements. While taking account of the requirements in their own country, each of the four countries has been working within UK-agreed principles to develop employer-led models of supervision. These models will have no role in fitness-to-practise matters concerning midwives. The new models of midwifery supervision will be introduced following the removal of the current statutory requirements and will build on the systems and processes for good governance and professional performance already in place through employers.

The second change that the order makes is to remove the statutory requirement for the NMC to have a midwifery committee. The role of the midwifery committee is to advise the NMC's council on matters affecting midwifery. This statutory requirement for a regulator to have a committee for a specific profession is unique to the NMC. The removal of this requirement does not prevent the NMC from establishing committees or groups in relation to midwifery, but simply removes the statutory requirement to do so—again aligning the regulation of midwives with that of other medical professions.

The NMC is working to ensure that appropriate, non-statutory routes are put in place so that the council continues to obtain expert advice on midwifery matters. To that end it has established a strategic midwifery panel to advise on key midwifery issues and develop strategic thinking on the future approach to midwifery regulation. This panel has four-country representation and includes the Royal College of Midwives. The NMC has also appointed a senior midwifery adviser to provide expert advice on midwifery issues. It is important to note that the NMC still has a statutory duty to consult persons likely to be affected by any proposed rules changes, and when establishing standards and guidance, including midwives and those with an interest in midwifery.

This Government value the important role of midwives and believe that they provide one of the most fundamental services in our health system—enabling babies to be brought into the world in a safe environment. I hope that noble Lords will be reassured that these changes will support the profession in ensuring the best outcomes for mothers and their babies.

The NMC sets standards of conduct, performance and behaviour for over 657,000 nurses and almost 35,000 midwives, and the third set of changes concerns the fitness-to-practise processes that the NMC follows when a registrant does not meet these standards. In 2015-16, the cost of these processes was over £58 million —around 76% of the NMC's budget. The changes in this order will enable the NMC to take proportionate action to address less serious concerns more efficiently and effectively while maintaining public protection.

The department believes that the principles of better regulation centre on giving greater autonomy and flexibility to the regulatory bodies to enable them to more effectively deal with fitness-to-practise cases. The changes we are introducing include new powers for the investigating committee to agree undertakings with a registrant or issue a warning or advice to a registrant. They also include the replacement of the conduct and competence committee and the health committee with a single fitness-to-practise committee where both conduct and health issues can be considered. These changes will ensure that the NMC is able to respond to fitness-to-practise allegations in a more efficient and proportionate way, benefiting patients, registrants and employers.

The NMC is working with stakeholders to draft guidance for its investigating committee and case examiners in relation to the new powers. We would expect the NMC to exercise its powers in a fair, reasonable and proportionate manner, balancing the need for public protection and upholding standards and confidence in the profession with the interests of the nurse or midwife. The NMC has assured the department that it will keep the operation of its new powers under review. The NMC is also subject to accountability hearings with the health committee and to annual performance reviews by the Professional Standards Authority. The NMC will need to amend its fitness-to-practise rules before some of the changes come into effect. An Order in Council with these proposed amendments will be laid in Parliament for consideration.

The changes that this order makes to the NMC's governing legislation will ensure that the regulation of nurses and midwives continues to be fit for purpose and will have patient safety at its heart. I beg to move.

Amendment to the Motion

Moved by ***Lord Hunt of Kings Heath***

At end insert "but that this House regrets that the draft order abolishes the statutory midwifery committee; and calls on Her Majesty's Government to ensure that robust arrangements are in place to ensure the continuation of supportive clinical supervision and leadership for midwives."

Lord Hunt of Kings Heath (Lab): My Lords, I thank the Minister for introducing the order.

It is fair to say that we debate midwifery regulation at a time of great challenge for the profession. I was looking recently at the fifth *State of Maternity Services Report*, produced by the Royal College of Midwives, which shows so clearly that we are in the eye of a perfect storm: the number of births is going up; there are fewer births to younger women and more to older women, which puts extra pressure on services; and we need more midwives.

We also need more midwives because of the age profile of the profession and the attrition rate of newly qualified midwives. One in three midwives are in their 50s and 60s. Even though, as the Minister has said, the number of training places is going up, the RCM estimates that the net annual increase at the moment is only about 100 midwives per annum. The RCM argues that, to deal with this, the NHS needs to do much more to retain existing staff and ensure that newly qualified midwives are employed quickly.

I very much share the Minister's view that it is important we have an effective regulatory system alongside effective supervision of the profession, with clear and visible leadership at local, regional and national levels, but this is at the heart of my concerns about the order. The Minister explained very well the background to the order and the various reviews emanating from the serious incidents in Morecambe Bay. The NMC subsequently commissioned advice from the King's Fund, which took as its basis that midwifery is regulated differently from other healthcare professions. The King's Fund also undertook a review, to which information provided by the overseeing Professional Standards Authority cited,

"a lack of evidence to suggest that the risks posed by contemporary midwifery require an additional tier of regulation"—

that is, the supervisors—

"bringing into question the proportionality of the current system when compared to that operating for other professions".

The PSA also stated that,

"the imposition of regulatory sanctions or prohibitions by one midwife on another without lay scrutiny is counter to principles of good regulation in the post-Shipman era".

As the Minister has said, the core recommendation arising from that work of the King's Fund was that,

"The NMC as the health care professional regulator should have direct responsibility and accountability solely for the core functions of regulation. The legislation pertaining to the NMC should be revised to reflect this. This means that the additional layer of regulation currently in place for midwives and the extended role for the NMC over statutory supervision should end".

As we have heard, the NMC has accepted that core recommendation, which is reflected in the order before us.

I understand clearly the logic behind the recommendation and the order that we have tonight, but I think it is worth looking in detail at the King's Fund report. It acknowledged that, if you removed the supervisory role and restricted the role of the NMC to purely that of a regulator—which I do not disagree with—you would leave a gap. As the King's Fund said,

"While clearly valued and of benefit to midwives, the functions of support and development, leadership of the profession and strategic clinical leadership are not the role of the regulator. We believe that others in the health care system should take on responsibility for ensuring these functions continue".

The report laid out a number of options and acknowledged that this was not guaranteed. It therefore recommended that the Department of Health,

"should consider how best to ensure access to ongoing supervision and support for midwives … Organisations providing maternity care should consider how they will continue to provide access for service users to discuss aspects of their care … NHS England … should assure themselves that they have adequate facility for accessing strategic input from the midwifery profession into the development of maternity services".

Essentially, the point of my regret Motion is to ask the Minister to spell out exactly what progress is being made—

Lord Willis of Knaresborough (LD): The noble Lord has raised an incredibly important point. Would he accept that the department, and indeed NHS England, together with the regulator, have moved very quickly to have the chief nursing officers from the four countries charged with the responsibilities, which quite rightly they should have, for actually putting in place adequate supervisory arrangements in order to support the midwives? Does he not feel that that is sufficient? If not, what else could be done?

Lord Hunt of Kings Heath: I am very grateful to the noble Lord for his intervention. I fully accept the point he raises. The noble Lord knows a very great deal about nursing and midwifery, and has done some very valuable work in this area, but he mentioned the word "nursing". He will know that there is an issue about how midwifery leadership is undertaken under the banner of nurses. That is really what I want to come to, but I think his point is very valid.

I am not suggesting that the Government—essentially, we are talking about four government departments—have not looked into this issue, but there are some issues about the visibility of professional leadership of the midwifery profession which I worry about. We know that midwives are subsumed under nursing leadership, and that has some consequences when it comes to priorities and resources. It is also worth saying to the noble Lord that, of course, often these directors can be described as directors of nursing and midwifery, but to get to a director level in the NHS, even at NHS trust level, midwives have to become directors of nursing and therefore they need a nursing qualification. My understanding is that only 30% of midwives are also nurses, so there is almost a glass ceiling for many members of the midwifery profession.

7.30 pm

Why am I concerned about this? It is very simply that, given the huge pressures on midwifery at the moment, I worry that, when it comes to decisions being made

[LORD HUNT OF KINGS HEATH]
nationally, either in the Department of Health or other health departments, or in NHS England or in the regional offices of NHS England, or locally on the boards of NHS trusts, with the best will in the world the midwifery voice is often not heard. As we see pressure coming on midwifery services, it is a worry that at board level, for example, there are few instances where the head of midwifery reports directly to the board, so the board does not always hear the concerns of the midwifery profession.

Lord Willis of Knaresborough: I enjoy this better than listening to great long tirades. Is the noble Lord not pointing to a system failure in our health service? Is he not falling into the trap of saying that, unless you have a protected silo, you cannot have an adequate voice? Surely, given his own thinking in Birmingham, which has been quite outstanding, and given what is happening in Manchester, we are looking at health economies where we are putting together groups of professionals working as teams, rather than perpetuating the idea that, unless we have a silo, we cannot move forward.

Lord Hunt of Kings Heath: My Lords, I understand where the noble Lord is coming from. I would never want to propose a situation of a silo, but there are instances where it is necessary to give—I do not think that "protection" is exactly the word—some kind of underlining to the importance of a particular profession. The noble Baroness, Lady Cumberlege, is here, and it seems to me that the fact that she had to undertake a review recently is a visible sign of the problems that we have had in getting midwifery issues to the top of the table. I am not seeking to create a whole hierarchy of new directors at a cost of money and to silo it, but I think that we have some problems at the moment.

This issue was raised in the other place when the order was debated there. I actually think there is a case for there to be a chief midwifery officer at government level. In the other place, the Minister said that the Government consider that,

"the chief nursing officer is the professional lead for both nursing and midwifery and we intend that to continue. That role is supported by the head of maternity in NHS England, which will continue to be the case. … There will be a regional maternity lead and a deputy regional maternity lead in each of the four NHS England regions".—[*Official Report*, Commons, Delegated Legislation Committee, 22/2/17; cols. 9-10.]

I must say that I do not like the term "maternity lead", as it seems to understate and undermine the position. I know that you cannot say that everything is in the title, but "maternity lead" to me means a lower status—it is quite clear to me that you use "maternity lead" to indicate a lower status.

Let me be clear that the current head of midwifery in NHS England is a distinguished and highly respected midwife—there is no question about that—but I think that there is a problem. What does "head of midwifery" mean? Why do we not use the word "director"? There is an issue about authority and status. At the end of the day, as I understand it, the head of midwifery is the head of the profession in England, and I think that NHS England should recognise that in that person's title and position.

It is very important that midwives as a whole look to the chief midwife for that essential professional leadership. It is clear from what the NMC has said, and from the order before us, that the NMC cannot provide that professional leadership. It is there to regulate, so we need strong professional leadership. I hope that the Minister will give this some further consideration. I am not seeking to create a whole new edifice; I am concerned about the voice of midwifery not being heard at the highest level.

That brings me to the proposed abolition of the midwifery committee. Again, I am the last person to believe that, if you have a committee, everything is well. Of course, I understand entirely why the NMC does not like the statutory midwifery committee. I completely get that; no chief executive of any body ever likes to have a statutory committee, particularly if the other bits of the area that it regulates do not have one. We all understand that, but you have to look at the fact that the NMC currently has 640,000 nurses on its register and 40,000 midwives. Inevitably, issues to do with nursing are bound to dominate the NMC consideration. So the benefit of having a statutory committee is again to give some kind of protection and recognition that midwifery needs to have some consideration within this very large regulatory body.

As a result of discussions, for which I am grateful, the NMC has given various assurances about the strategic midwifery panel and the number of advisers that will be appointed. Can the Minister ensure that Parliament is kept informed of the work of the NMC and, in particular, about how it will ensure that it is fully apprised of midwifery matters by the new arrangements? He said earlier that the NMC would keep these matters under review—and I think that he referred to the new disciplinary procedures—but I took that to mean these arrangements in general. "Under review" falls within governance and quango-land; it is not really a high status. Could he ensure that, at the very least, the NMC reports to Parliament on a regular basis on how it ensures that midwifery issues are fully heard by the council?

In conclusion, in moving this amendment I do not seek to criticise the NMC. I believe that the current chief executive inherited a mammoth challenge. I have been impressed by the progress that she has made, but the distinctive role of midwifery should be recognised, particularly at a time of extreme pressure on the profession. It is important that we do not dissipate its voice. I would welcome some reassurance from the Minister. I beg to move.

Baroness Walmsley (LD): My Lords, midwives have a very special role in the local medical and nursing team. They should be seen as an integral part of that team; their role should not necessarily end at the point of birth. I know from many cases that the personal relationship built up between a mother and her designated midwife during the antenatal period can be enormously valuable at a time when she is very vulnerable. The mother often has the confidence to confide in the midwife if she has any health or personal security worries. I am talking here about domestic abuse, which so often occurs when a woman is pregnant. It is important that this relationship is nurtured and nothing gets in the way of a midwife adding all the value of

which she or he is capable. I would hope that in future there would be more integration between the midwife, the health visitor and the district nurse. There is a lot of potential for that.

No debate about midwives and nurses is complete without talking about numbers. The noble Lord, Lord Hunt, mentioned rates of attrition. A couple of weeks ago, at Oral Questions, I asked the Minister how data are collected on the rate of attrition. It is not consistent. It makes it very difficult to know which areas of the country are good at keeping their midwives and nurses and which are not, so that we can see and spread best practice.

We have an enormous number of nurses from EU countries and, indeed, from other parts of the world. Brexit is looming and there is uncertainty—which we debated in this House yesterday and on other occasions—over the status of people from other EU countries working here. At the same time, we have a Government who are trying to reduce their immigration rates to a maximum of 100,000 a year, which could affect midwives coming from countries outside the EU. This is a big concern and we must not ignore it when we are talking about regulation.

I turn to the order before us and the amendment in the name of the noble Lord, Lord Hunt. We on these Benches are broadly supportive of the order, which will bring more flexibility into the regulation of nurses and midwives, in line with the way in which the GMC and other medical regulators are able to carry out their fitness-to-practise processes. It is right that the regulator should be able to deal more proportionately with cases where there is a finding of "no case to answer" and where the person concerned accepts that the practice in that case falls short of what should be expected. There is currently no power for examiners to consider alternative ways of resolving these cases. However, the Secondary Legislation Scrutiny Committee raised some questions about the new power to issue a warning. It accepted that this power is permissive but felt that, if examiners are to use the power to give a warning, and guidance is intended to direct users as to how terms should be interpreted, then the detail of the threshold for issuing a warning should either be in statutory guidance or in the order. What is the Government's response to the committee's suggestion?

Turning to the role of midwives in the governance of the NMC, it is important that the particular role of midwives is both recognised and catered for. However, if you are taking away the role of development support and supervision, and separating it from regulation, you do not necessarily need the existing structure of the midwifery committee. It is important and right that regulation and supervision are separated. I understand that there is to be a new midwifery panel which should be consulted and that supervision is to be replaced by new support and supervision structures in the four countries of the UK. There is also to be a new senior midwifery adviser. I take the point of the noble Lord, Lord Hunt, about status, which is important, particularly to the morale of the midwifery profession. Concerns have been raised that the new structures for support and supervision will not be ready in time for the changes at the end of March. I understand that, of the four nations, only Wales is ready to take over. What can the Minister tell us about the state of readiness of the other three nations?

I recognise that the new structures that the Government are proposing present a challenge to the midwifery profession. This is right, in response to the reviews discussed earlier. There are concerns that the new structures within the NMC cannot, for example, put midwifery matters on the council's agenda. Can the Minister assure us that specific midwifery issues will be appropriately dealt with under the new structures?

The effectiveness of the proposed new structures will take a while to be demonstrated, so it is right that we seek these reassurances at the outset. In the end, patient safety must be at the forefront and that depends on the quality of development, training and supervision of the midwives. It is a challenge for the profession, and it is only right that we give midwives the opportunity to demonstrate that they can rise to that challenge. However, it is right that the powers and structures of the regulator are up to date and able to cope with the workload in an appropriate manner at a time when, as the noble Lord, Lord Hunt, said, the demand is rising.

7.45 pm

Baroness Cumberlege (Con): My Lords, I declare an interest as a vice-president of the Royal College of Midwives.

I read the Second Reading debate that the noble Lord, Lord Hunt, introduced on the regulation of health and social care earlier this month. I was disappointed not to be able to listen to it in the Chamber because it had some eminent speakers. I read *Hansard* and, as so often, I was impressed by the clarity and first-hand knowledge that noble Lords brought to that debate. This time, the noble Lord, Lord Hunt, concentrated on beaming down on one aspect of regulation concerning one profession—midwifery.

In Parliament a couple of weeks ago, the general secretary of the Royal College of Midwives enlightened parliamentarians on the state of maternity services in 2016. Professor Cathy Warwick told us that, in the last six years, we have seen the number of midwives increase by 1,560, but that the increase has massively slowed down in recent years. As noble Lords have said in this debate, the work has been changing. First, we have seen an increase in the number of mothers giving birth. Secondly, we know that teenage pregnancies have declined—something we have sought to achieve in this country. However, older mothers over the age of 40 are giving birth and they have increased in number. Many of these women have long-standing health complications. They are sicker and sometimes they have babies who are more vulnerable and need greater care.

As the noble Lord, Lord Hunt, has said, the midwifery workforce is also changing, with an increase in the number of experienced midwives nearing retirement—one in three is now in her 50s or 60s. It is not so much about the numbers; this is a body of midwives who are really experienced. We need experienced midwives to ensure that new students coming in can understand the service in which they are working and the different skills they need. So we have to try to maintain the

[Baroness Cumberlege]
midwives that we already have and this order has a part to play. It is a new order and my noble friend the Minister gave a clear exposition of its value.

I want to probe some of its consequences a little. When we were carrying out the review of maternity services for England, the first thing we did was to ask the women, their partners and families what they wanted from maternity services. In this case, our constituency is the midwives. What do the midwives want? It was interesting that, when they were asked about statutory supervision going, they were very upset about it. Eighty-four per cent wanted to keep statutory supervision. They had keen concerns about patient safety and about the quality of assurance if supervision were removed from the law. They felt that the potential for the removal of support for midwives was considerable and they had concerns relating to the NMC's ability to manage an increased fitness-to-practise referral rate.

These are genuine concerns and it is our duty to see that they are met as the roll-out of this new process takes place. I understand that the Secretary of State has commissioned another review of the NMC, again concerning Morecambe Bay. One case from there has still to be concluded after eight years. No wonder midwives are concerned about the NMC's ability to manage an increased fitness-to-practise referral rate. The NMC has to step up to the plate. Look at how the GMC has evolved over years: the first thing its new chief executive did was ensure that it was an efficient organisation. I do not get that feeling of confidence with the NMC. Some work needs to be done on that, maybe on aspects brought up by the review.

In the five-year forward view, which was agreed between the DoH and NHS England, an ambition was laid out to make it easier for groups of midwives to set up their own NHS-funded midwifery services. We all agree that we need more midwives. Since the publication of *Better Births*, a small group of midwives called Neighbourhood Midwives has gathered together and managed to get a contract from the NHS. This gives us more midwives and women more choice, which is something we should applaud. However, it is important that midwives are subject to regulation, wherever they are working, and that has been the case since the European Union brought in its directive. There is a long-running saga about independent midwives and I declare my interest as a patron of Independent Midwives UK. The NMC has felt it right to ensure that independent midwives are suitably covered for clinical indemnity when delivering women giving birth, and it is right to do so. However, I cannot glean from the NMC what level of indemnity is required. I have asked five times what is the "appropriate"—the NMC's word—cover that it requires for clinical indemnity for independent midwives. I get no answer. I do not know whether the NMC realises how difficult it is to get clinical indemnity to cover people working in different professions. Although a lot of the cases that are brought are actually systems failures, sometimes they are obstetric failures. It is right that the regulators should look at the safety record of those they are indemnifying and I am not sure that is understood by the NMC.

The first questions that any insurance company is going to ask are: "What is meant by appropriate? What size of pot is required?". Again, we get no answers. The NMC has spent a very long time warning independent midwives that they could lose their registration. Four days before Christmas, the NMC sent a letter out telling independent midwives that they had lost their right to practise. Four days before Christmas, these trained midwives, who had spent a long time in the service, were in fear of losing their livelihoods, vocation and profession. Above all, they lost their right to attend in labour women whom they knew well. As the noble Baroness, Lady Walmsley, has said, that is so important. We know that if there is continuity in the person looking after the woman through antenatal, the birth and postnatal care, we reduce the number of premature births by 24%. Premature births are expensive, emotionally and in monetary terms. If we can reduce them by that percentage we should strive very hard to achieve it.

Since these independent midwives have sought clarity from the NMC, the NMC owes it to them, but they have received conflicting advice. In its values, the NMC states that it wants to be "fair". My noble friend raised the question of fairness. The NMC says that it will be,

"consistent in the way we deal with people".

I cannot see that consistency. All the midwives and women who have rung me up and sent me emails have said that they do not understand the consistency because it is not there. It seems to apply one way to one midwife and another way to another, depending on the relationships—sometimes family ones—with the women. I welcome the review of the NMC, not least to examine the level and content of communication provided to those registrants who are seeking clarity, so that they know where they stand. That is the least that a registration body should do.

Better Births, the report of the maternity review for England, has two central themes: choice and safety. As my noble friend said in his introduction to this debate, safety should be at the heart of the service. We agree with that and safety is attached to the order. In our travels during the review, we listened to countless women—lots of them—trying to find out exactly what they wanted from the service. One strong response was that women and their families are seeking a safer service. I will tell noble Lords, and particularly the Minister, about our visit to Sweden because we are waiting for a consultation paper and I hope my noble friend will put pressure on the Secretary of State and his colleagues to release it. Over the last five or so years, Sweden has reduced the number of serious birth injuries from 20 per 100,000 babies born to five. In England, our current rate is 30 per 100,000. Last year, the NHS Litigation Authority paid out £560 million to 130 families for children who had been damaged at birth, while another 70 families who were not able to establish clinical negligence in this country received no compensation at all.

8 pm

In England, it takes up to 10 years to settle such cases, and the costs are likely to rise to £1 billion by 2020. In Sweden, the test is whether the damage was

avoidable. It does not seek to establish blame; that is really important. The family is fully involved and the aim is to carry out a rapid investigation to determine what happened and to feed the learning back to the clinical teams, while providing rapid support for families. Our system means the learning is delayed. The people involved in the incidents have moved on after this period of time, so none of the learning is fed back.

We need a system like the one in Sweden. That is what we have proposed in *Better Births* through what we call a rapid resolution and redress system. The Government have agreed to consult on this scheme and we hope the consultation will be launched as soon as possible, because we have momentum going now. This is a once-in-a-generation opportunity to do a really good thing for families, for babies, for the country and for the Exchequer. Anything my noble friend can do to ensure its publication would be very welcome indeed.

One has only to read the superb series on midwifery in the *Lancet* to see the scope of practice for midwives and how it differs immensely from nursing. This addresses some of the points the noble Lord, Lord Hunt, made. The Royal College of Midwives makes the case clearly in its paper when it says:

"We would not treat doctors and dentists as if they were interchangeable".

Nursing and midwifery should be treated like that—they are different. I understand what the noble Lord, Lord Willis, was saying about silos. We have to avoid them. Travelling around the country one sees silos, but one also sees magical things happening where there are no silos—where obstetricians, midwives, nurses, neonatal nurses and all the rest are working together. Within *Better Births*, we are introducing local maternity systems to try to make that happen.

Our concern is heightened by the fact that, as the noble Lord, Lord Hunt, was saying, there are no seats on the council set aside for midwives. Inevitably, the council is dominated by nurses. Therefore, with the best will in the world, the council can at times make decisions about midwifery with no midwife in the room. I do not think that is right. We are told about a panel, but a panel is not strong. We want something that has presence, that is respected and that can make a mark within the regulatory body, the NMC.

I will give my noble friend four questions—I should have given him notice of this, but I have been very busy on another Bill today—and I will perhaps seek a written answer to them. Could he give an assurance that, regardless of any removal of the legal requirement for a midwifery committee, the Government will continue to require the NMC to pay due regard to the midwifery profession, recognising that it regulates two separate, distinct professions? The NMC will be required to put in place robust systems to ensure that it seeks and obtains professional midwifery advice on all matters affecting midwifery. Will he agree to what I think is a very modest request?

Could my noble friend also confirm that the NMC will continue to be required to produce standards and guidance for midwives? This should include standards pertaining to the care of mothers and babies and be based upon extensive consultation with the midwifery profession. Another value the NMC has is accountability. As the noble Lord, Lord Hunt, and the noble Baroness, Lady Walmsley, said, we need the NMC to be accountable. Her comment about knowing where the good places are that retain midwives is very important. My view is that it depends on the leadership and accountability of those looking after the service.

Thirdly, I ask my noble friend, regarding local supervision of midwives, to confirm that a robust system will be in place to monitor the rollout of the new system and, specifically, that the Department of Health will be required to report to Parliament—as has already been suggested in the debate—on the effectiveness of the new arrangements after their first year of operation.

Finally, I ask my noble friend to agree that there is a need for a senior midwifery voice within the UK Government. As has been said, we have a superb leader in NHS England on midwifery care, but that person needs a higher status. That person should be on the same level as the Chief Nursing Officer, because they are looking at different aspects. Can my noble friend consider having a chief midwifery officer at the national level, with directors of midwifery within the NHS England regional teams? We need that leadership. Over the years it has been much diminished, as the noble Lord, Lord Hunt, explained very well. We very much admire the lead maternity person in NHS England but they need to be called a "director". She or he needs a higher status, and I do not think that such a request is impossible to respond to.

Lord Willis of Knaresborough: My Lords, at the beginning of this debate I decided not to say anything. I have been stung into action but I will be incredibly brief. First, I thank the noble Lord, Lord Hunt, for tabling his amendment to the Motion. Although I am very supportive of the order, he has again demonstrated the need to debate these orders and to get the views of Members of your Lordships' House who have vast experience in these areas. The noble Baroness, Lady Cumberlege, has again demonstrated the breadth of her experience and has brought it to bear.

I should declare my interests as a consultant to the NMC and as a fellow of the Royal College of Nursing—an honorary one because I have never been a nurse and have never been on the register. People would not trust me in that way. I should also put on the record that I am huge admirer of the midwifery profession. My daughter has recently had two caesarean sections in different parts of the country. One location, which I shall not name, was incredibly disappointing and demonstrated some of the real issues that have to be addressed. That is where my passion for a more integrated service has come from.

The other birth took place last year in York, which has an integrated and mother-led maternity service—exactly what my noble friend Lady Walmsley and the noble Baroness referred to. There, the mother is not a recipient on behalf of others but leads the whole process—everything from pain management to enhanced recovery. All of this demonstrates what is in the noble Baroness's report. Things should be looked at from the mother's point of view and built up from there.

[Lord Willis of Knaresborough]

Again, I would not wish my silo comments to be misunderstood but I am desperately anxious that the role of the midwife should in many ways go back to its origins. This legislation goes back over a century, but in those days the midwife was not simply someone who ensured a safe birth; she was instrumental in dealing with the family within the community. I feel that we miss a trick when we do not use the phenomenal expertise within the midwifery profession to become leaders in carrying forward the Government's drive—rightly, in my view—towards a community, population-based health economy. Midwives could fulfil that role.

There are two issues relating to the order, and I want to stick to those rather than deal with some of the other issues that have been raised. The first is fitness to practise, the importance of which has been somewhat overlooked compared with the removal of the committee. Fitness to practise is a huge issue both for midwives and for the nursing profession. Some £48 million a year of nurses' and midwives' own money is spent on this process. People often wait five years for a resolution. Their career is wrecked, they cannot go back to practise and we lose them. All that needs to be addressed. I applaud the Government for listening to the concerns of the Nursing and Midwifery Council and for bringing in a fitness-to-practise process. That will at least speed matters up and get an early resolution.

Quite rightly, questions have been raised about the way in which affirmative resolutions come about, whether they should be in the order or in guidance, and whether the guidance should be statutory. These are things for the Minister to work out with his colleagues, and I applaud those questions. It is very important that we have a system which is speedy, fair and appropriate.

The second issue with the order is the separation of the role of regulation from professional interest. I cannot believe that anyone believes that that is not the right thing to do. With independent regulators of healthcare systems—whether they relate to dentists, doctors, nurses or midwives—the professional interest should be separated from the regulatory interest. That is what this order tries to do. Rightly, the noble Baroness, Lady Cumberlege, and the noble Lord, Lord Hunt, asked whether, by separating them, you lose something or gain something. I believe that we gain something enormous by having a regulator who can concentrate and where everybody knows where the regulatory burden lies and there is a clear responsibility to deal with it. The reports on Morecambe Bay show that that was all fudged, with one blaming the other. I think that we must try to move away from that.

The whole issue of supervision worries me as much as it does other Members of the House. We cannot simply say that, by putting it with the four lead nurses, who are responsible for nursing and midwifery, the problem is solved. We know full well that that is not the case. For instance, they do not have a resource to be able to deliver that service across the four countries. I hope that the Minister, when he replies, will say what plans the Government have to actually enforce and indeed to support the four CNOs, or Chief Nursing Officers—and midwifery officers, we should call them—rather than simply leave them to get on with it.

This order is going in the right direction. Sadly, it misses out one thing—I thought the Minister might mention it in his opening statement—which is that the department has said on a number of occasions that this order has nothing to do with the scope of midwifery practice. The noble Baroness, Lady Cumberlege, quite rightly said that we have to have someone who sets the standards for midwifery in the future, and it has to be the NMC. I totally agree with her. But, quite frankly, simply creating more of the same is not the answer as we move forward. You cannot have the models that she described in her excellent report without having far greater flexibility within the system than we have now.

When the NMC looks at the scope of midwifery practice in setting new standards—as I am sure it will—I hope that it will look at how we can put midwifery rightfully in place right at the heart of our care system and make sure that the sort of standards that we have lived by for the past century are enhanced and that we can be proud of them as we move forward. I applaud the Minister for bringing this forward and I am wholly supportive of it, although my colleague has a few reservations.

8.15 pm

Lord O'Shaughnessy: I thank noble Lords for an extremely high-quality and very well-informed debate on both this order and the amendment. I will do my best to deal with the many questions and important issues that were raised by noble Lords.

First, I welcome the welcome that this order has broadly received. As the noble Lord, Lord Willis, pointed out, the separation of the professional interest and regulatory functions is best practice; that is how we expect regulation to take place these days. Unfortunately, in Morecambe Bay that lack of separation was one of the contributing factors, and that obviously has been a spur to change. I also welcome the words of support for the fitness-to-practise changes, which I think will bring in a quicker, more flexible and more proportionate system.

I turn to some of the points made by the noble Lord, Lord Hunt. There is undoubtedly an issue about the workforce, as he pointed out. There has been an increase in the number of births, and more is being done both to recruit existing staff and to retain them. But at the heart of this are three issues. The first is the point about silos versus integrated care. Of course we all want integrated care; that is the direction of travel. At the same time, necessary changes are taking place to the regulatory structure to deliver the kind of separation and clarity that we also want to happen. The concern being raised is whether, in doing so, we will in some way change the status of the profession, if you like—not intentionally, but by virtue of the removal of various statutory arrangements and so on. I can understand why some might draw that conclusion, but it is clearly not the intention of what is happening here, and I hope to set out a few reasons why that is the case.

The proposed changes do not alter the status of midwifery as a distinct profession with its own standards. There will be no change to the protected title of midwife, and delivering a baby remains a protected function for a midwife or medical practitioner; it is

incredibly important to set that out at the beginning. As the noble Lord, Lord Hunt, pointed out, there are various tiers of representation, if you like, below Chief Nursing Officer: head of maternity, NHS England regional heads, deputy heads and so on. I do not know the specific reason why that is called maternity, not midwifery. I imagine that it might be because of integrated care and because, although it might have midwifery as the major focus of it, it might also involve other aspects of the birthing arrangements. I shall certainly endeavour to find out and write to the noble Lord about it.

The other issues were around whether the profession is getting the attention and respect that it deserves and indeed is properly represented at the right levels and in the right bodies. There is a midwife on the NMC. That is not a statutory requirement but the council ensures that it happens. It is also fair to say that we have a Secretary of State who is taking the issue of maternity safety incredibly seriously. I mentioned the national ambition, but we also had the publication of *Safer Maternity Care* in October and I will come on to some of the issues raised by my noble friend Lady Cumberlege as well. A lot is going on to support the profession.

One important part of that is making sure that this new supervisory function takes place properly and replaces statutory supervision. I quite understand why noble Lords will be concerned that that should take place. While on the one hand we have all agreed that the separation of regulation and supervision needs to happen and that the order creates greater clarity, there must be something to replace the supervisory arrangements that we agree need to change.

I reassure noble Lords that the four countries in the UK have been working together since 2015 to take account of the new employer-led models of supervision. In England, the NHS has evaluated the model in seven pilot sites to inform the model and its implementation, and there has been an education programme. Those pilots began last November and will complete in March, so they are informing the arrangements that go on in England. In the other countries, systemic reviews of the new system are taking place, on slightly different timeframes in different countries. But I reassure noble Lords that that will be happening. Not only is there preparation for the new system, there will be reviews into its effectiveness. Given all the points noble Lords have made about our experiences in Morecambe Bay and elsewhere, it is clearly essential that that happens.

A reasonable question was asked by the noble Baroness, Lady Walmsley, and my noble friend Lady Cumberlege about whether midwifery issues would be properly dealt with by the NMC and whether it has the capacity to do so, given its past problems. It received a much more positive performance review from the Professional Standards Authority, which found improvements down the line. Clearly, there is still one outstanding issue resulting from Morecambe Bay, but it is now an improved regulator and we can have confidence that it will do the kind of job that we now ask it to do.

My noble friend Lady Cumberlege raised the issue of the right level of insurance for independent midwives. I know that is incredibly important for maternal choice. Insurance is clearly a hot topic at the moment, but I will certainly write to her and find out exactly what the regulator is doing to give proper guidance, because that must happen. She is quite right to raise the example of Sweden. We know that there is a lot more to be done to improve maternity services in this country. Change is going on. My noble friend also mentioned the consultation going on with regard to regulatory redress. There needs to be a change of culture so that it is less adversarial and less litigious, and designed to increase learning and bring that to bear much more quickly on the process. We are undertaking that set of reforms and I pay huge tribute to her for her work in making that happen. My noble friend asked a set of other questions and I will certainly write to her so that I can answer her properly if I have not done so in the answers I have given already.

I end by paying tribute to the profession itself. The noble Lord, Lord Willis, made an excellent point, which goes beyond the scope of the order but is important. There is more that midwives can—indeed, must—do if we are to have a properly integrated system. We all want a healthcare system that, in the end, involves a personalised pathway. Whatever your experience, whether you are an older person, a young person, a mother or whatever, you can have someone by your side, leading you through that experience. Clearly, many pregnant women will want that to be a midwife, so I absolutely take the point about integrating with health visitors and many others besides. I hope changes are going on. That is perhaps not a subject for debate tonight but for another time. On that basis, I ask the noble Lord, Lord Hunt, to withdraw his amendment.

Lord Hunt of Kings Heath: My Lords, I am very grateful to the Minister. I totally agree with the noble Baroness, Lady Walmsley, about the importance of the midwife being an integral part of the team. The noble Lord, Lord Willis, is right, as is the Minister, that one of the lessons of Morecambe Bay is the problem of different professions being completely unable to relate and talk to each other. Frankly, this is an issue that the health service suffers from and the Minister is right that, in a sense, it could be argued that the NMC is putting forward a more integrated approach to regulation. The risk is that, because of the disparity between the number of nurses and midwives—and we have often seen this before—integration could mean the marginalisation of certain people. This is the risk that we need to guard against—the unintended consequence.

The Minister has given a very good assurance that this matter will be kept under clear review; he emphasised that this would be a proper review and I very much welcome that. However, I still believe that, in the end, the answer to the question that he posed—"Are midwives around the right table?"—is that the experience of the health service is that they are never around the table at all. This is the problem. Whether the meetings are at board level of an English NHS trust, at the top level of the senior management team of a regional office of NHS Executive, at the NHS Executive itself, or at the department, they are never there. The big problem of how we get midwifery input at those top levels is one that we are still struggling with.

[Lord Hunt of Kings Heath]

It is ironic that, having debated only two weeks ago the need for an approach to health regulation that covers all professions, we are now debating one profession. The noble Baroness, Lady Cumberlege, is absolutely right about this. I am indebted to the barrister Kenneth Hamer from Henderson Chambers who wrote to me after our last debate to point out that the Supreme Court is now using the Law Commission's work on regulation to inform its own judgments. If there is any argument for the Government to produce a Bill in relation to unified health regulation very quickly, that is it.

On the loss of the midwifery supervisor, everyone agrees that the regulatory function needs to be separated off, and it is absolutely right that that is what the NMC should be concerned with. But there is concern about the loss of the supervisor at the local level. For me, the issue is safety. We know that NHS trusts are coming under huge pressure in relation to staffing levels from NHS Improvement because of pressure to reduce the deficit. The question, which I pose rhetorically, is who, given this pressure and given that midwifery does not have a voice at the board table, is going to defend the safety of the profession in terms of numbers when it comes to kind of hard decisions that are going to be made? That is my concern and frankly it has not been answered.

On the NMC's performance, I remain of the view that the current chief executive has done a very good job trying to deal with the huge problems that she inherited. I hope that, whatever review is undertaken, it will not destabilise the NMC and that she will be given the time she needs to continue to make improvements.

The Minister said that he would exchange letters on the issue of independent midwives. I hope he will agree to go a little bit further and discuss this matter with his noble friend and the NMC. This issue has now been around for years, but it could clearly be sorted. A number of people are involved—the department, NHS England, the NMC and, I suspect, the NHS Litigation Authority—but if Ministers banged their heads together this would be sorted; that needs to happen. Frankly, even post the calamity of the 2012 Act, which has created such a discordant structure, Ministers can, in the end, determine something to happen here. That is what we need.

There is no question about it: I am not interested in silo professional behaviour or in whether a statutory committee is the right way to go forward. But I am convinced that the voice of midwifery needs to be heard at the highest level. I hope that this excellent debate—I am grateful to the Minister, too, for his response—has been helpful in just making that point. I shall not press my amendment to the Motion.

Amendment to the Motion withdrawn.

Motion agreed.

House adjourned at 8.30 pm.

Grand Committee

Tuesday 28 February 2017

Arrangement of Business

Announcement

3.30 pm

The Deputy Chairman of Committees (Baroness Stedman-Scott): Good afternoon and welcome to proceedings in the Grand Committee. If there is a Division in the House, the Committee will stand adjourned for 10 minutes.

Economic Growth (Regulatory Functions) Order 2017

Considered in Grand Committee

3.30 pm

Moved by ***Lord Prior of Brampton***

That the Grand Committee do consider the Economic Growth (Regulatory Functions) Order 2017.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, in moving the Economic Growth (Regulatory Functions) Order 2017, I shall speak to the Business Impact Target (Relevant Regulators) Regulations 2017 and the Growth Duty Statutory Guidance 2017. The purpose of these statutory instruments is to support regulatory bodies in the UK to create a healthier business environment by making regulation more proportionate, transparent and accountable. The Government are committed to making sure that regulation supports growth and are doing all that they can to unlock productivity in the UK.

Better regulation is central to the Government's desire to make the UK the best place in the world to start and grow a business and is a key part of our commitment to drive economic growth and boost productivity. During the previous Parliament, the Government made significant progress through programmes such as one in, two out and the Red Tape Challenge, which were instrumental in delivering savings of £10 billion to businesses over the lifetime of the Parliament. These programmes encouraged a cultural shift in government departments towards more proportionate and smarter regulation.

This approach was formalised through the Small Business, Enterprise and Employment Act 2015, which provides a transparent framework for assessing, managing and reporting on new regulatory impacts to business, known as the business impact target. Through the Enterprise Act, we extended the ambition of the target by expanding it so that it can include the activities of a wider range of regulators beyond those acting on behalf of UK Ministers. This will support us achieving a further £10 billion of deregulatory benefit for UK businesses in this Parliament.

Alongside the business impact target, the Government also introduced a duty through the Deregulation Act for regulators to have regard to the desirability of promoting economic growth. This is known as the growth duty, which will help to ensure that regulatory bodies contribute towards creating a healthier business environment by making regulation more proportionate, transparent and accountable. Together, the business impact target and growth duty will support a positive shift in the way regulation is delivered.

It is sometimes easy to caricature all regulation as negative. The Government recognise that proportionate and well-targeted regulation is important and provides vital protections. It can help markets work better, enables new business models and start-ups to compete and protects consumers. The Government have been clear in the industrial strategy that regulatory frameworks need to support business investment rather than distort markets. This does not mean deregulation at any cost. We have to avoid, for example, the combination of light-touch regulation and emphasis on short-term financial gain that contributed to the financial and banking crisis.

Better regulation recognises that regulation can impose costs on business. It can divert attention from more productive uses, such as growing into new markets, innovation and training. It also recognises that regulation can favour more established incumbent operators in a market. For example, it is estimated to cost small business 10 times more per employee, on average, to comply with regulations than it costs a large business. The Government's better regulation system therefore seeks to minimise these burdens by ensuring that the likely impacts of regulation are fully assessed and by providing an incentive to reduce costs on business where possible. Indeed, there are numerous examples of good, proportionate regulation that is good for business and society as a whole.

Under the previous Government, we conducted a series of sector reviews into regulator enforcement practice. Reforms delivered as a result are now saving business millions of pounds, encouraging companies to grow, speeding up multibillion-pound investments and reducing burdens, all without weakening protections. These reforms have been welcomed by businesses and trade bodies across the country. These savings are being made by removing assessment and reporting requirements from more than a quarter of a million businesses where there was no scope for them to deliver the energy savings that the requirements were in place to deliver. This allows the regulator to focus on working with those businesses where real energy savings can be made.

However, there is still more to do. The regulations before the Committee today will be an important step towards creating a healthier business environment by making regulation more proportionate, transparent and accountable. The result will be to take another significant step forward to ensuring that regulation supports growth and that Britain is the best place in the world to start and grow a business.

I turn to the detail of the regulations. The Business Impact Target (Relevant Regulators) Regulations 2017 specify the individual regulators that will be brought within scope of the business impact target. The regulators

[Lord Prior of Brampton]
listed within the scope of these regulations will be required to assess the economic impact on business of changes to their regulatory policies and practices that come into force, or cease to have effect, during the course of the Parliament. The assessments must be verified by the Regulatory Policy Committee and the savings or burdens imposed on business incorporated into the Government's annual report outlining their performance against the target.

The rationale for this is clear. Businesses consistently tell the Government that the actions of regulators are as important as the content of legislation in determining their experience of regulation. So the costs to business of their regulatory activities should be actively assessed and transparently reported. These regulations deliver that. Where impacts are imposed on business by changes in regulatory activity, these should be transparent. In addition, business should have confidence in the estimates that the Government have made of that impact.

The changes do not in any way undermine the core purpose of regulators, which provide vital protections and help ensure that markets function effectively. Regulation has important economic, social and environmental goals. Regulation for those reasons should be proportionate and at the minimum cost to business necessary to achieve the outcome required. Including further regulators in the business impact target will help regulators to make the move to smarter regulation that delivers outcomes with the minimum overhead. This will be good for British business and will contribute to a more consistent regulatory process.

The Government consulted on the proposed list of regulators to be brought within scope of the business impact target from 11 February to 17 March 2016. We received responses from a range of stakeholders, including business, regulators, trade associations and other organisations. The majority of respondents were supportive of the proposal to bring the regulators specified in the consultation within the scope of the business impact target, with one respondent stating that the BIT would result in regulators,

"having to design their services, policies and procedures in a way that suits the needs of business".

No further regulators were suggested to be brought within scope, while a handful of regulators questioned their own inclusion. We have reviewed these queries and are satisfied that it is appropriate to bring the regulators listed in this instrument within scope of the target. We have also paid close attention to issues raised around proportionality. The Government have been working collaboratively with a wide range of regulators to design a process for implementation that minimises burdens on regulators.

I turn to the growth duty regulations and guidance. The Deregulation Act 2015 introduced a legislative requirement for persons exercising a regulatory function to have regard to the desirability of promoting economic growth. The Economic Growth (Regulatory Functions) Order 2017 sets out the specific regulatory functions to which this duty applies. Alongside this instrument, the Growth Duty Statutory Guidance 2017 has been produced to assist regulators in fulfilling their new responsibilities, at both a strategic and operational level.

Proportionate delivery of regulation plays an important role in supporting competitive markets and improving social and environmental outcomes. Regulatory enforcement that is not proportionate and risk-based imposes unnecessary costs on business, creates uncertainty and undermines investment. The way in which regulation is enforced can have significant effects on businesses' ability and willingness to invest and grow.

Although there is already a great deal of good, proportionate and effective regulation, there is evidence to suggest that some regulators fail to take sufficient account of the economic consequences of their actions and place unnecessary burdens on business in the exercise of their regulatory functions. To address this, the then Chancellor announced in the 2012 Autumn Statement several measures designed to create a healthier business environment by making regulation more proportionate, transparent and accountable. Although many regulators consider the impact of their actions on economic growth, there are those that do not. Indeed, some regulators think that they are unable to take account of growth as they do not have a statutory requirement to do so or their statutory objectives do not refer to growth.

Requiring regulators to have regard to economic growth in this way will address the uncertainty of regulators that feel that they cannot have regard for economic growth and will put the obligation on a statutory footing, thereby complementing regulators' other legal obligations. This duty will help regulators to carry out their functions in a way that is conducive to economic growth and will ensure that regulatory action is taken only when it is needed and that any action that is taken is proportionate. The growth duty will therefore encourage regulators to develop more mature and productive relationships with the sectors and businesses that they regulate, driving up the accountability of regulators to the business community. This will help to deliver our aspirations for greater productivity and growth in our economy.

Public consultations on the growth duty were held in 2014 and 2015. A further consultation was held alongside the consultation on the scope of the business impact target, and responses were received from a broad cross-section of stakeholders. The majority of responses to the consultation on the growth duty agreed that regulators should have regard to economic growth and should be accountable for whether they have properly considered business growth in their decision-making.

There were a small number of objections to the inclusion of particular regulators in scope, in the main based on arguments related to the amount of regulatory activity undertaken or the fact that the organisation did not have any regulatory functions. Having considered these responses, the Government are satisfied that it is appropriate to bring the regulators listed in the instrument within scope of the growth duty. We also received a number of responses on the draft guidance, with the vast majority commenting positively on its content.

The business impact target and growth duty play a central role in the Government's agenda to improve UK regulation. They support a positive shift in the way that regulation is delivered through reducing the regulatory burdens that hold businesses back and

prevent them from getting on with business. The measures are an important step towards creating a healthier business environment by making regulation more proportionate, transparent and accountable and I commend them to the Committee.

Lord Mendelsohn (Lab): My Lords, as I arrived this morning, I thought that the House of Lords had taken to Oscar fever and that the red carpet had given way for the red of the House of Lords. I saw the Annunciator, and it read, "One Order, Six Regulations and one Statutory Guidance" as the business of the day. It reminded me of "Four Weddings and a Funeral". I see that we have not had quite the same box-office draw.

I thank the Minister for his introductory comments. There is a lot that we all agree on as to the eventual targets that we want to reach and the sort of improvements that can be made. In many ways, we agree on motherhood and apple pie being good things. Our concern that the wrong measures were adopted in the primary legislation to achieve them are reinforced by some of the weaknesses in the statutory instruments, the consultation processes before them and the conclusions drawn, and it is on those things that I raise a few issues and questions.

Part of this relates to the overall policy context, which is the attempt to have a target of £10 billion of reductions. Central Government are unable to do it on their own, so they now look to regulators to take up some of the heft in this colossal task. Without some detailed sense of what can be achieved—to which I shall come later—it is misguided to believe that the solution can be what we have now, which is essentially a cultural response: if we have a new culture, a new way of working, things will improve. I am a huge sceptic about the creation of culture as a strong driver in making these things move. I believe strongly that we have to build able business cultures, but I find frequently that the Government's response is to provide measures that will impact the culture.

3.45 pm

I will turn specifically to the role of regulators shortly, but I am reminded of Debenhams, a company that has consistently enacted appalling late payment policies. Over two Christmases, delayed payments caused a huge amount of stress to its small business suppliers. It is also the business identified as having the worst record for paying people below the minimum wage. But absolutely nothing has happened to change that culture, notwithstanding all the changes that the Government have made or suggested—not one issue has been raised by shareholders or management and there has been no significant government intervention to change that. Show me where the changes introduced by the Government have impacted the culture. I would like the Ministers to think about that as I raise other questions about the cultural impact of some of these measures.

The measures before us specify the functions that are covered and define the growth duty in relation to individual businesses, sectors and overall general economic growth. That is rather a large task on rather a large scale, and all have different environments that I am not sure this adequately addresses. Let me get to the heart of some of my questions about whether or not this will have a meaningful impact. What is the current evidence base to show the negative impact that regulators have on growth? What is the overall estimate of that impact? How will that meaningfully be addressed by these measures? You then have to assess whether or not the regulators themselves are the right regulators to include to ensure that such deregulatory changes can provide that sort of benefit.

Looking at the list of regulators, very specific questions arise. How will such a duty operate in the context of the British Hallmarking Council? Is there an estimate at this stage of both the identifiable problem and the identifiable benefit of how any application of a growth target can be achieved in relation to the British Hallmarking Council, the Commissioners of Irish Lights, the Guardians of the Standard of Wrought Plate in Birmingham, the Guardians of the Standard of Wrought Plate within the town of Sheffield, the Northern Lighthouse Board, the Regulator of Community Interest Companies or the Sports Grounds Safety Authority? How can it be achieved for Trinity House, as defined in Section 223(1) of the Merchant Shipping Act 1995? How can it be achieved for the legislation listed in Part 3, such as the Conservation of Seals Act or the Bees Act? How has growth developed in the context of the Office for Nuclear Regulation, where the sector is defined by a deal created by the Government to introduce one nuclear power and in an industry with very few players? How can a regulator establish growth on a sectoral, company or general economic basis in that context?

I have tried to focus my comments on just a few of the Acts and regulations listed so that the Minister can come back with some specific examples of evidence, assessment, a means of measurement or a prognosis as to what the likely impact of establishing growth targets could be on their operation. However, what would be the achievable objective of a growth target in relation to the Avian Influenza Preventive Measures (England) Regulations 2006 or the Transmissible Spongiform Encephalopathies—I defy the Minister to pronounce that right first time—(England) Regulations 2010? What is the achievable objective in relation to the Outer Space Act 1986?

How did we get to the estimate of the eight measures identified under "plant health"? What proportion of regulations and statutes are they of those that deal with plant health? Why did we end up with a measure entitled The Potatoes Originating In Egypt (England) Regulations 2004? Why are we looking at the potential for economic growth of the Endangered Species (Import and Export) Act 1976? It seems to me that the Government have vested a huge amount of effort in this on the basis that there is a wide body of evidence that regulators have underperformed in their understanding of their economic role and rationale. I would be very interested to know what evaluation has been done of the work of any of the regulatory authorities vis-à-vis the Endangered Species (Import and Export) Act 1976. I would be more than prepared for the Minister to write to me on that point if he does not have the information at his fingertips.

I am always a great sceptic about many things. This debate gives me an opportunity to ask a question about the European Convention on Human Rights. Paragraph 6 of the guidance states:

[LORD MENDELSOHN]

"The Parliamentary Under Secretary of State for Small Business Margot James MP has made the following statement regarding Human Rights: 'In my view the provisions of the Growth Duty Statutory Guidance are compatible with the Convention rights'".

I would be interested to know whether that was the Government's opinion, and what legal advice was taken, and at what level.

I reinforce the point about the regulators. I have made this point on a few occasions but I will give it a go again. The Government have said in the policy background document that although many regulators consider the impact of their actions on economic growth, some do not. Which evaluation has established those that do not? Is there a list of those that do not? Some regulators think that they are unable to take account of growth. Can the Minister tell us which ones they are, and which do not because they do not have a statutory requirement to do so? Economic impact is not the same as economic growth; these are two fundamentally different concepts. Are we confusing economic impact with economic growth? Requiring a regulator to have regard to economic growth would address this uncertainty and would put this obligation on a statutory footing, complementing regulators' other legal obligations.

The guidance identifies productivity. It would be interesting to evaluate that. Many of the measures with a growth target refer specifically to making sure that you have an understanding of the impact of the measure on businesses. How does that relate to growth? Are the regulators competent to assess this? Has there been any evaluation of any of the regulators' competency to do so? How are they expected to gain the expertise to do this? How will they be evaluated on whether or not they are achieving that? Specifically, I would be interested to understand how the Commissioners of Irish Lights, for example, or the staff of Natural England are becoming competent in some of the areas they are being asked to look at. What training or competencies will be required of the staff or their advisers in achieving an economic growth target, as opposed to an economic impact target?

One of the other areas I am most concerned about is the suggestion that the benefits of this measure to small businesses include reduced administration. There is a sense that proportionate decisions will inherently benefit small businesses. There is absolutely no evidence for this. I would be grateful if the Minister provided any evidence that proportionate decisions by regulators help small businesses. Any decision by a regulator disproportionately impacts the capacity of a small business. Therefore, I would be interested to hear how this duty will suddenly change the entire 50-year history of small business operations in this country. That would be a very useful piece of evidence to illustrate. There is a notion that this measure will result in a massive reduction in administrative duties, inspection costs, duplication of information and the use of external contractors. Again, I would like to know what the specific evidence was that this would be achieved.

Of course, we ended up with a very interesting consultation. There has always been a great deal of optimism that changing regulation and how it is made will have direct business impact. There is always a great deal of enthusiasm from businesses that this will be achieved. Businesses were hopeful but uncertain as to what the establishment of the growth duty would measure. In fact, in this consultation—which goes through the business impact target as well as the overall guidance—it is very clear that one massive area of regulation has a massive impact on businesses. I would like to note the first, second and third, but instead I will deal in a second with the one that is first by an overwhelming majority: tax collection, which is, I believe, outside these duties.

When the regulators were asked about the potential impact of the growth duty, a thumping 69% felt that it would have absolutely no impact whatever. I like the notion in the report—one tries to be generous—that:

"A sizeable minority … however were highly positive about the potential impact".

I would like to have some understanding of the use of the word "highly". It is in paragraph 70 of the "Business Benefits" section of the impact assessment. There is an estimate of how many businesses in this country will now benefit—495,215 out of more than 5 million. I would be very grateful if the Minister broke down that figure. Are they small businesses? Is it by size; by demographic? Is there any particular measure whereby we can get to 495,215?

I turn to the potential growth benefits, which are beautifully laid out in a document for which I am very grateful. Remarkably, it talks about the actual benefits that will accrue to business. The benefits based on the 31% are worth in total an extraordinary £37 million to the economy—once you net out the costs to businesses for the regulator, which are somewhere between £134,000 and £1.5 million, the figure is some £36 million.

The Government, in a vague attempt to try to boost the number of potential benefits, then create an assumption of an even larger overall benefit of this growth duty, this huge transformation of culture, this huge transformation of the ability of regulators to give an overall benefit, of—wait for it—£90.3 million. But the assumption, based on 31% of businesses—some 495,000—receiving benefits, moves from a 0.06% reduction in time used for administration to a 5% reduction. I am not bright enough to work out the maths of what the multiplier is to get from 0.06% to 5%, but that means that we are looking more than 100% of businesses, not the 31% estimated. Even if we change the dial, that number is the largest number that comes to the £90.3 million benefit. I would like the Minister to set a target as to how this massive legislative change will provide a benefit, and give us some idea of how it will be achieved.

I appreciate that the golden target for changing behaviour in respect of the impact is important, but this measure is not right. It confuses the notion of impact and growth, and ends up having little impact and causing little growth.

4 pm

I want to cover several questions on the Business Impact Target (Relevant Regulators) Regulations 2017, including on the consultation and how the regulations join the dots between the business impact target and its goals. Warren Buffett expressed a notion that can be applied to this. He said:

"In the long run, managements stressing accounting appearance over economic substance usually achieve little of either".

It seems that we may be going down that path with this provision. On the regulators' contribution to the £10 billion cost reduction target, I would be grateful to know what the expectation is from the Minister on the specific list of regulators. I will say this slowly, so that he can write down a list and give me figures at the very end. How much of this target are we expecting these regulators to achieve?

There is the British Hallmarking Council. There is also the Civil Aviation Authority, which recently wasted a whole sum of money trying to undermine a business that was restructuring and refinancing itself, for which it has not been held to account at all. I would be interested to know if the contribution that was expected in the business target was anywhere near enough adequately to deal with the costs and expenditure wasted on pursuing Monarch Airlines during its restructuring. I would be grateful to know what the expected target is. There is also the Commissioners of Irish Lights and the Competition and Markets Authority—I thought that that might be a good example, so I want to throw in a full toss. To throw another, there is also the Financial Conduct Authority, but I would also be interested to know what the Incorporation of Goldsmiths of the City of Edinburgh and the Edinburgh Assay Office are meant to achieve.

I am concerned about the context of the consultation. As the Minister said in his comments, there were a number of responses about inclusion in the list. The government response said that seven respondents, six of which were regulators, questioned the inclusion of specific regulators on the grounds that they had either never exercised their regulatory functions or that they were small and therefore would be less able to fulfil their obligations. The Government's argument is that the test for whether regulators should be brought in is not whether they are small or whether they use these regulatory functions, but on the hypothesis that, where regulators do not use their powers, they would still be included on the basis that, if they were ever to use such powers, it would have an effect on business; if they do not use them, the impact target places negligible burdens on them, but it places a whole series of duties and other burdens that otherwise would not exist. If a regulator has not exercised those functions at all, what is the context in which it is likely to do so? Would there not be a case to introduce this when those conditions are more likely? I would be grateful to know, particularly of those regulators that raised that question, whether any of them has ever exercised a regulatory function, what consideration was given to how they have operated, what the circumstances are in which they would exercise those regulations and whether there is a case to reconsider their inclusion in this list at this stage.

I would also be grateful if the Minister addressed the fundamental problems about the business impact target. In the end, the policy context, as the Government have said and which we understand, is the target reduction of £10 billion. The Government have estimated that in this Parliament, thus far, they have achieved an improvement of £0.9 billion, although there are an additional £8.3 billion of net costs to businesses based on regulatory decisions that fall outside the business impact target. The issue of whether the regulators can really perform any meaningful function in achieving this through their inclusion within the business impact target is an extraordinary red herring.

Some 90% of the total expected reductions in costs during the last Parliament were achieved through 10 regulatory decisions, and one was overwhelmingly more significant than all the others: changing the inflation index used to increase pension benefits. That simple regulatory decision—the great justification for the Government's achievement in the last Parliament—has led directly to pension deficits and a whole range of other problems. Whether this was a great deregulatory measure that has not led to the perverse outcomes we are witnessing, such as the number of companies now having to address pension deficit problems and insolvency issues, is another matter. I will turn to the associated issues a bit later.

Ten decisions taken and 900 regulations introduced, of which, broadly, 40% are included in the target and 60% are not, does not constitute a particularly effective measure. Businesses believe that the level of regulation is an obstacle to success, but a majority identify tax and administration as the principal regulatory problem. This majority is particularly clear when it comes to small businesses, many of which identify tax and administration, which is not within the scope of the Government's business impact targets, as the burdensome area of compliance. This is one of the key issues that the Government need to address.

Let me turn to one of the problems with the business impact target, which will impact on how the regulators will perform. The evidence base for what the regulators can achieve is not there, and all these issues have been uncovered in an excellent National Audit Office report. Do the Government know the costs that business incurs as a result of existing regulations? The National Audit Office was absolutely clear that they do not: they have not the first clue about the overall burden. Establishing a target without any understanding of the burdens is impossible, but the Government have achieved it—perhaps it is an achievement to include in the next manifesto. However, this does not help to achieve a decline in regulatory burdens.

Nor does this measure appear to be helping to improve the analysis. Five of the 14 departments with a regulatory responsibility within the scope of the target have told the National Audit Office that they have no plans to quantify any existing regulations. Not all of them even answered the question, but five were clear that they had no desire or plans to do so. The measure does not in fact reflect the administrative or regulatory costs to businesses in any meaningful way because it excludes all tax and administration, European Union regulation, fees, charges, self-regulation and co-regulation. There is no sense of how these costs really affect businesses.

The Better Regulation Executive and the Regulatory Policy Committee are doing an important job, which we support, and we are keen to make progress, but I am not sure that these measures entirely help them to do so. On evaluating their impact, it is clear that there is no ongoing, clear and identifiable system of effective measurement. A calculation is made of the intended

[Lord Mendelsohn]
deregulatory impact; it is then counted as a five-year target, no matter what is achieved, because there is no effective method of ensuring ongoing measurement.

In the National Audit Office's utterly caustic, in my view, review of the business impact target, it identified not just weaknesses in the calculation of these impacts but a huge gulf in terms of departments' desire to calculate the targets because ultimately they do not provide any real potential savings to business. I make the point again that, according to the calculation, on average businesses should be saving £400. I have a few businesses and I am still trying to find the money from the savings from all these deregulatory impacts. I have not found any. I have found a lot more costs associated with them but I have not found any savings.

This lack of evaluation means that the Government cannot know the real impact of their efforts on businesses and do not learn from any previous interventions. There is no systematic evaluation of any of the previous interventions. As a result, we are now putting a duty on a series of regulators to be involved in this business impact target, which again have made no evaluation of their impact on businesses and have no mechanism of targeting or tracking those impacts by any sampling or pooling of data from businesses. It is very clear that they will miss these targets as a result.

I will give an example. Regulatory impacts are not just direct. According to the Financial Conduct Authority, I am not a politically exposed person. According to Ministers at the Dispatch Box, I am not a politically exposed person. According to every bank in this country, I am a politically exposed person. Therefore, the banks' duties of compliance, based on their estimate of what their duties are likely to be—be they international or domestic—mean that they will evaluate me beyond what the regulation says. In one case, it took so long to open a bank account that we even received compensation from a bank. How do you measure the impact of the unintended consequences of regulation and therefore the unintended consequences of deregulatory drag?

Health and safety is the third most complained about area. Yesterday I undertook a 40-minute interview for a work experience opportunity for a young adult to come here from school to shadow me, which was one of the most extraordinary and onerous tasks because of the interpretation of health and safety. Of course, that suggests that I will not do it again. Again, what are the impacts of regulation and how can one be assured that regulators are able to deal with those sorts of issues? Ultimately—and I will turn to this later in more detail, or I might not, given the time—the essential issue comes down to whether or not regulators communicate effectively what their regulations are, how best to make proportionate judgments and how best to fill in forms or do other things.

Actually, the benefits are more in regulators' duty to communicate. The Small Business Commissioner in Australia has transformed the ability to deal with regulatory drag and problems, giving the regulators a duty to communicate and an obligation to ensure that businesses are able to fulfil their duties in regulation. That has been far more successful than giving them an arbitrary target that they cannot deal with, that they have no competency to deal with and that they have no experience of dealing with.

Turning to the guidance, I must say that I found it utterly fascinating to read and utterly depressing to consider as a duty on the regulators with any real confidence that they will be able to meaningfully achieve growth. Of course, a variety of issues come with this. The Explanatory Notes state that, as a result of placing the growth duty, the annual indirect benefit to businesses is a potential £28.1 million—another whopping sum. Rather than dissect that, I will give the Minister an opportunity to explain how that figure was reached, what was measured, the detail behind it and the economic model used. That would be helpful. If he does not have all the assumptions or the economic model to hand, I am more than happy to receive a letter.

4.15 pm

The notes go on to explain that, as a result of regulators considering economic growth, businesses should experience more proportionate decisions and see a reduction in administrative burdens. Have the Government seen any evidence of this since the implementation of the Act? Has there been any indication that this is a cultural shift that takes place, with or without more specific regulation?

The document itself contains a significant number of words on how regulators need to understand the business environment and it deals with the business environment on a company, sectoral and overall economy basis. It looks at minimising burdens on business productivity at a company level. I was pleased to see at least some economic theory introduced in the pursuit of productivity, which I thought was meaningful. It also talks about proportionate decision-making and the need to demonstrate a regard for the growth duty, which I thought was not a coherent section and was particularly weak.

I have to ask one fundamental question: what is the theory behind how regulators will perform their duties in relation to growth? Is there some macroeconomic theory that we can look at? In looking at the duties, is there some sense in which business-based productivity exists? I understand the Government's five-plank system of measurement, which is orthodox within economic theory, but how do regulatory duties on a sectoral business basis achieve those productivity gains? Are we asking the regulators to try to achieve something that will simply be impossible to achieve?

That leads me to the conclusion that there is a reasonable fear that this can be used to game the system. The Government made it clear in Committee that companies will be able to hold regulators to account by means of the growth duty. Does the duty not achieve the means for companies to try to seek redress through the courts? The Minister admitted this during its passage in the other House, where the assumption was—

The Deputy Chairman of Committees: My Lords, there is a Division in the Chamber. The Committee stands adjourned for 10 minutes.

4.17 pm

Sitting suspended for a Division in the House.

4.33 pm

Lord Mendelsohn: My Lords, as I was saying before I was so rudely interrupted—I thank the noble Lord, Lord Foster, for that wonderful line—I will conclude with these points. I noted the sceptical faces from the other side on the point about whether businesses will do this. It was not addressed. In Committee in the other place, the Minister said:

"Businesses told us that they were unlikely to mount judicial reviews except in extreme circumstances. As we all know, judicial reviews are very costly".—[*Official Report*, Commons, Deregulation Bill Committee, 20/3/14; col. 526.]

They are not that costly compared with regulatory impacts. The cost of lawyers may be quite significant, but compared with the benefits that can be gained from regulatory changes it is certainly a calculation worth making. If you give someone an instrument to do something, you have a duty to shareholders to do it if you have an operable option. Anyone involved in business will know that.

The impact assessment says:

"This duty will provide a framework for regulators explicitly to factor growth into their decision-making where they have not previously felt able to do so, enabling businesses to hold regulators accountable for their actions".

The guidance provides far too many opportunities for the sorts of challenges and arguments that undermine the regulators' principal role and functions. The way the guidance is written has no regard for any particular growth theory, target, goal or effective paradigm. It provides a lot of opportunity for options and arguments to be laid against it and against decisions on the basis of growth.

Again, the Government should not be surprised about this. Even its own report on the consultation said that,

"the business community sought clarity on how regulators can be held to account if they failed to comply with the Growth Duty, or to follow the guidance".

I do not think the answer will be, "Look in the annual report and take a view". This is a very important issue. Fundamentally, the core aspects, which this does not address or help, provide legal capacity on the one side and on the other do not give a real sense about the principal duties that regulators have in existing law without the growth duty and whether they will be able to fulfil them.

In conclusion, while we share the Government's view on a variety of the objectives and goals and even on the journey they wish to take, we were sceptical when the main legislation passed. All these statutory instruments do is lay bare the lack of evidence, thinking and design of these policies, and how, through the unfortunate circumstance of unintended consequences, they are likely to cause more harm than good. I would be very grateful if the Minister responded to all, some, or even a few of my questions.

Lord Foster of Bath (LD): My Lords, I am delighted to follow the noble Lord, Lord Mendelsohn. Like him and no doubt everyone else in the Room, I too am in favour of motherhood and apple pie. I am in favour of the removal of unnecessary red tape, bureaucracy and the gold-plating we have seen on too many EU directives. Like the Minister, I accept entirely that some regulations serve a vital purpose. The much-maligned health and safety regulations provide a very good case in point. If we are to take steps such as the ones proposed here, it is vital that we are aware of precisely what the targets are, what they are expected to achieve and what evidence we will gather to see whether they have been achieved, and that we ensure there is proper policing of any new directives, regulations or whatever is put in place.

I spent a relatively brief time in government. For a short period I was a junior Minister in the Department for Communities and Local Government. As a Minister in a Government who had introduced in 2010 the various proposals to encourage, as it says in our documentation,

"a cultural shift in Government Departments towards more proportionate and smarter regulation",

I nevertheless came up against the difficulties that could be created by the one-in, one-out and later one-in, two-out policies. As a result of that experience, and subsequently as the Government Deputy Chief Whip serving on Oliver Letwin's committee that dealt with these issues, I learned a number of lessons.

There are six lessons, and I will briefly share them and use this as an opportunity to probe the Minister about the proposal before us today. The first lesson related to energy performance certificates. Regulations were brought in requiring commercial buildings in certain circumstances—depending on their size, whether there was public access, and so on—to display an energy performance certificate visibly in the premises. The idea was that putting the energy performance certificate up would lead the owner of the building to try to improve energy performance, thereby saving overall cost to both the occupiers of the building and the nation as a whole. I was very much in favour of the certificates.

However, the lesson I learned was that often, those certificates never appeared in commercial buildings. Indeed, I would go so far as to say that they did not appear in a number of government buildings. The question I therefore ask is: what policing mechanisms will apply to the measures and what procedures will be put in place to ensure that we can assess whether they are successful—a point raised earlier by the noble Lord, Lord Mendelsohn—so we can learn from them in future? We have learned nothing from energy performance certificates because they were not properly introduced, policed or evaluated.

The second lesson I learned was from the introduction of zero-carbon homes, something I felt strongly about as a Minister. That fell under all sorts of difficulties, particularly from Conservative colleagues within the coalition, because they said that we had to ensure that we abide by the "one regulation in, one regulation out" rule, commensurate financial implications, and so on. It got into real difficulty because of the way the target was assessed. It was argued that the regulation's requiring improved energy efficiency of domestic premises would impose an increased cost on the builders of those premises, so it had to be counted as a "one in" for which we had to find a "one out". In truth, the most sensible way to look at it would have been to say that the improvement of the building's energy performance when built would lead to a long-term saving for the

[Lord Foster of Bath]
resident occupants of the property and the nation as a whole but, whereas with energy performance certificates for commercial building, it was okay for the occupants to benefit, when it came to domestic property, it was not.

If we have targets, we must be careful that we do not hit the target but miss the point. I worry that in some of the regulations before us, particularly given the list of regulatory bodies, we may be missing the point.

The third lesson, which I am prepared to acknowledge is not relevant to the documents before us but I want to get on the record, is that these things are not always straightforward common sense. They are often political. I share with noble Lords my experience on Oliver Letwin's committee when I proposed a measure that would have reduced the cost of business—not requiring certain things to be advertised in local newspapers. This was prevented on the purely political grounds that we did not want to upset local newspapers in the run-up to the 2015 general election.

I also learned that we have to apply common sense. On the basis of common sense, I will not go through the long list of regulatory bodies to which the noble Lord, Lord Mendelsohn, referred. I will just pick one at random and ask the Minister, to whom I have given a little advance notice, about the Northern Lighthouse Board. I wonder what the Minister sees as its ability to perform an economic growth responsibility. The Northern Lighthouse Board is there to serve Scotland and the Isle of Man, and to deliver a reliable, efficient and cost-effective aids-to-navigation service for the benefit and safety of all mariners. I genuinely have difficulty seeing how it will be able to fulfil its requirement.

That leads to my fifth and penultimate point: these things should be based on sound consultation. We have before us a very long list of regulatory bodies that will be brought in under these regulations. Yet, as the noble Lord, Lord Mendelsohn, has pointed out, and as it says in paragraph 8.2, there were 49 respondents, and 38 responses were received on the question of scope from a broad cross-section of stakeholders, including regulators, businesses and representative bodies. It is clear that only a small number of regulators responded to the consultation, as paragraph 8.3 hints at. It says that there were five objections to the inclusion of particular regulators within scope; the noble Lord, Lord Mendelsohn, dealt with the rest of the list.

4.45 pm

I find it difficult to know, with such a large number of bodies, whether real efforts were made—I would be grateful if the Minister could tell us—to go to those regulators that were going to be included specifically to ask them for their individual comments. I find it difficult to believe that more of them would not have responded if they had known that this would have an impact on their roles and responsibilities.

Finally, the other lesson that I learned from all this was to study carefully the impact assessment. I have gone through the impact assessment of a number of these documents in some detail. I do not intend to pull this to shreds, but I just to say the Minister that, like the noble Lord, Lord Mendelsohn, I have concerns about what impact assessments tell us. I will raise just one example—and there are many—which is from the impact assessment in paragraph 25. It says:

"The total cost to regulators in year 1 associated with QRP assessments, NQRP summaries and familiarisation is estimated to be £1.985 million".

That is a precise figure. Paragraph 26 tells us how it was achieved. It was based on a survey carried out in 2013, followed up with another a bit later, of a small number of regulators about a totally different question. That question was whether they would be likely to have cost recovery from businesses for the introduction of small business appeals champions. I have to question whether that sort of analysis can lead to such a precise figure as a cost of £1.985 million. I am sure that the Minister has looked at these things in detail and he has convinced himself that he is satisfied with it, but it would be helpful to ask him to put on record that the Government are satisfied with the assessments within the impact assessment.

I have no intention to challenge any of the instruments before us, but, like the noble Lord, Lord Mendelsohn, I have some concerns about the number of bodies that have been included, about the impact assessment and about whether the absolutely admirable aims that the Government have in mind really will be achieved by these measures.

Lord Prior of Brampton: My Lords, I cut my speech down, but I rather wish that I had not—I could still be talking. The noble Lord, Lord Mendelsohn, has raised too many issues and I cannot answer them all. I got to 38 questions and I stopped counting—I had forgotten what the first one was. I will have to write to the noble Lord on a number of the points that he raised.

While it is still fresh in my mind, I will just deal with the Northern Lighthouse Board—the noble Lord, Lord Foster, gave me warning about it during the vote. The Northern Lighthouse Board and the Commissioners of Irish Lights provide advice to ports about navigational safety matters. Because that advice can affect the business of port operators and their customers, it is right that the bodies should have regard to growth in making regulatory decisions. In a sense, that illustrates another issue that he raised about whether we had gone through all these regulators carefully, talked to them and found out what impact they might have. I hope that that answers that question.

The noble Lord, Lord Mendelsohn, started off positively. He said that he agreed with our objectives and goals, but then he went on to qualify that by referring to them both as motherhood and apple pie. Nevertheless, I think that the noble Lord, Lord Foster, also agrees. Who can possibly argue with the objectives of reducing regulation and achieving economic growth? The noble Lord, Lord Mendelsohn, also quoted—I wish that I had written it down, but he spoke too quickly—Warren Buffett. I will give him back another quote from Warren Buffett, if I can. It is much shorter and more succinct: you get what you incent for. For me, in business, that is a pretty profound statement.

I would like to apply that, if I can, to regulation. The noble Lord was sceptical about culture. I am less sceptical about it. I think that the culture that exists within individual firms can be hugely powerful. I will

give an illustration that quite neatly contrasts culture with regulation or law. RBS and HBOS had been in banking for 200 years in Edinburgh. They were absolutely conservative, traditional Scottish banks. In the space of 10 years, their culture completely changed. I do not know whether the noble Lord has read the reports, particularly into HBOS, by the Treasury Select Committee of the House of Commons. The culture in those two banks was deeply shocking. To some extent, it was set by the deregulation that his Government brought into the City after 2001, when Gordon Brown was Chancellor of the Exchequer, and subsequently. It may go back earlier to the deregulation of the City in the 1980s. Nevertheless, the culture within those two banks effectively destroyed them.

Culture is hugely important and very powerful. For example, there are laws about smoking now but there is also a culture around it: you feel bad about lighting up a cigarette in a car or in a building, irrespective of the law. When I was at the Care Quality Commission, we found that the leading indicator—

Lord Mendelsohn: We agree on culture and the capacity to destroy culture. The point that the noble Lord made, which I thought was very interesting, was about incentives. I am not clear about how this creates incentives as opposed to duties, which then have a numeric capacity to meddle and to change. Can he give me some idea?

Lord Prior of Brampton: May I finish off on a regulator that is not covered by BEIS, but is important none the less—the Care Quality Commission? We found there that the leading indicators of performance, whether you measure it in terms of patient safety, hitting waiting time targets or patient satisfaction, were around staff engagement, such as whether doctors and nurses enjoyed working in the hospital. A junior doctors survey done by the GMC was probably the single most predictive of all the indicators. Culture is hugely important.

The noble Lord referred to a duty to communicate, which plays into the point about culture. Putting that obligation to communicate on to regulators is important. In a sense, what we are trying to do by having a duty to promote growth is to change the culture and outlook of regulators. As the noble Lord, Lord Foster, said, they are not there to hit the target but miss the point —how often does that lead to unintended consequences? For example, we hit the waiting time target in an A&E department but the patient died. That is the kind of absurdity we can get into when targets become—

Lord Foster of Bath: I think that we are all singing from the same hymn sheet in our speeches, but the documents before us say something rather different. They talk of the sums of money that it is anticipated will be achieved by this. I entirely accept that the Northern Lighthouse Board is there to provide safety. Clearly, if it switched off the lights in all its lighthouses, ships would crash, the economy would be in difficulty and so on. Presumably, it could spend a lot of money and put up more lights and sirens and have more people sailing around rocky outcrops warning people to stay away, and there may be some more savings in that. That is all common sense. But the way in which it has been enumerated is about having a target but missing the cultural point that the Minister is rightly talking about. The papers do not talk about the culture.

Lord Prior of Brampton: One way to change the culture is to change the message. We are not setting specific targets for regulators. The purpose is to increase transparency, which I will talk about a little. I qualify it as "intelligent transparency". If we can put people in the position of making intelligent decisions and provide them with useful information, in my book that is the best form of regulation.

We are all agreed on the objectives and outcomes that we want from this. I see the exercise as trying to get a cultural shift in the behaviour of regulators. Both noble Lords have given examples of the road to hell being paved with good intentions. The last thing that we want is to encourage bad behaviour by pursuing regulation to the letter and achieving the opposite of what we want to. On one level, we are in violent agreement and, on another, we are clearly not. However, some important points have been raised and I would like to reflect on them and write to noble Lords on those issues.

To conclude, I would like to read out a few notes, just to get them on the record and perhaps explain a little better what I have just said. The importance of extending the scope of the business impact target is clear. Businesses consistently tell the Government that the actions of regulators are as important as the content of legislation in determining their experience of regulation. That has to be true. It is the way we interpret laws and decide whether they are helpful or not. For example, in giving up broadband at home I want to get through to BT to cancel my existing contract. Can I get through to BT? Can I hell. No one will answer the phone. It is about customer service. Funnily enough, having spoken briefly to the Intellectual Property Office yesterday, I think that it has a client-friendly attitude, which is the kind of attitude that we want from regulators.

The rationale for applying the growth duty is also clear. While there is already a great deal of good, proportionate and effective regulation, evidence suggests that some regulators fail to take sufficient account of the economic consequence of their actions and place unnecessary burdens on businesses. I think that the noble Lord wanted some examples of regulators that fall into that trap. We will certainly write to him on that.

Some regulators consider the impact of their actions on economic growth. It cannot be wrong to do that. If we said that regulators should not take into account economic growth, we would be shot at, quite rightly, from all sides. Many regulators think that they are unable to take account of growth because they do not have a statutory requirement to do so. That tells you something about the psychology of some regulators, frankly. They have to be told that economic growth matters. You would not think that you would need to be told that. We need to write to the noble Lord on that point. The new duty will help to bring all regulators up to the same high standard.

[Lord Prior of Brampton]

The growth duty will help regulators to carry out their functions in a way that is conducive to economic growth and will ensure that regulatory action is taken only when needed and that any action that is taken is proportionate. Again, the key words are "accountable", "transparent" and "proportionate". It will encourage regulators to develop more mature and productive relationships with the sectors and businesses that they regulate, driving up the accountability of regulators to the business community.

I conclude by saying that it is very easy to knock the regulators. Few people will stand up for regulators. But in some of the Brexit debates that we have had, when you look at the performance of the British regulators—for example, the EMA, the MHRA, the CAA or in the nuclear world—they are universally respected throughout Europe. Our regulators are highly respected and in the main they do an outstanding job. All we are trying to do in this legislation is to tilt the culture a little further towards practicality, transparency, productivity and growth.

Motion agreed.

Business Impact Target (Relevant Regulators) Regulations 2017

Considered in Grand Committee

5.01 pm

Moved by ***Lord Prior of Brampton***

That the Grand Committee do consider the Business Impact Target (Relevant Regulators) Regulations 2017.

Motion agreed.

Growth Duty Statutory Guidance

Considered in Grand Committee

5.01 pm

Moved by ***Lord Prior of Brampton***

That the Grand Committee do consider the Growth Duty Statutory Guidance.

Motion agreed.

Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017

Considered in Grand Committee

5.02 pm

Moved by ***Lord Prior of Brampton***

That the Grand Committee do consider the Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, in 2015 the Government introduced a series of reforms to modernise and streamline the insolvency process. The regulations we are debating make consequential amendments to the relevant special insolvency procedures for financial sector firms to take account of the reforms.

I will begin with a brief outline of the reforms to general insolvency law. The Deregulation Act 2015 separated out the authorisation of insolvency practitioners for personal and corporate insolvency. This reduces the cost of training for applicants who wish to specialise. The Small Business, Enterprise and Employment Act 2015 introduced a series of changes to streamline the insolvency process. This included an amendment to allow liquidators to exercise powers without court permission and an extension to the maximum term for an administration. In addition, the Insolvency (Amendment) Act (Northern Ireland) 2016 made similar reforms to insolvency legislation in Northern Ireland.

The purpose of these reforms was to reduce unnecessary regulation and therefore costs, improve public confidence in insolvency legislation, and make it clearer, more consistent, and modern. The Government carried out extensive consultations before bringing forward these reforms to the insolvency regime, which had the broad support of industry. The regulations make consequential amendments to the existing modified insolvency regimes for the financial sector. Modified insolvency regimes for the financial sector exist because general insolvency procedure is not always suitable for failed financial institutions. These modified insolvency regimes apply general insolvency law with modifications designed to address the special nature of some financial institutions—for example, the bank insolvency procedure. Because these special insolvency procedures for the financial sector are built on general insolvency law, they now need to be amended to reflect the reforms. The regulations are therefore important to ensure that the benefits of the reforms to general insolvency law are extended to the financial sector. They will also ensure that the modified insolvency regimes for the financial sector are compatible with general insolvency law. The proposed consequential amendments follow discussions with the regulatory authorities and the banking liaison panel.

In conclusion, the amendments are important to modernise and streamline modified insolvency regimes for the financial sector following the Government's reforms to general insolvency. I beg to move.

Lord Mendelsohn (Lab): My Lords, I thank the Minister for that explanation. We accept this as it is an effective codification of what was agreed during the passage of the legislation. The only questions that we wish to address relating to the provisions regard the Government's evolving policy on insolvency. Other issues have of course emerged in the light of experience about how this process can be done more efficiently. There are consultations on moratoriums and other sorts of things in future that we are now looking at, and of course there will be adjustments when the next wave takes place, when there will be issues around pensions and other things.

Particularly on moratoriums and other sorts of reforms where there are consultations to improve the process, we would be grateful to have some indication of the Government's thinking on whether they would bring this forward with the financial services industry and the companies that are covered. Would the provision that the Government are bringing forward encompass those along with all the other companies, or do they wish to have a separate procedure for financial companies?

Lord Prior of Brampton: I thank the noble Lord, Lord Mendelsohn, for his comments and his general support. I wonder if I could write to him to answer the question that he asked. On that basis, I commend the regulations to the Committee.

Motion agreed.

National Minimum Wage (Amendment) Regulations 2017

Considered in Grand Committee

5.08 pm

Moved by ***Baroness Buscombe***

That the Grand Committee do consider the National Minimum Wage (Amendment) Regulations 2017.

Baroness Buscombe (Con): My Lords, the purpose of these draft regulations is to increase the hourly rate of national minimum wage for all workers, including those who are entitled to the national living wage. The regulation also includes an increase in the accommodation offset rate, which is the only benefit in kind that counts towards minimum wage pay.

This Government are committed to delivering an economy that works for everyone by spreading wealth and prosperity across the country. Through the national minimum wage and the national living wage, the Government are ensuring that the lowest-paid are fairly rewarded for their contribution to the economy. The latest figures show that the employment rate is now at a record high of 74.6%. The unemployment rate is at 4.8%, and wages are up 2.6% on a year earlier.

I turn to aligning the national minimum wage and national living wage cycles. From this April, the Government will be uprating the rates for the national minimum wage and the national living wage simultaneously. The new rates will be effective from 1 April 2017 to coincide with the new tax year. Our aim is to simplify the implementation of the rates to make it easier for businesses to comply, as well as reducing the administrative burden on business.

The Government have sought independent and expert advice from the Low Pay Commission and have carefully considered and accepted all of its wage rate recommendations as set out in its autumn 2016 report. The Low Pay Commission is asked to recommend the highest possible increase in the national minimum wage rates without damaging the employment prospects of low-paid workers, and to recommend the rate of the national living wage such that it reaches 60% of median earnings by 2020, subject to economic growth. The Low Pay Commission considers a large and diverse body of evidence before making its recommendations to government.

From 1 April 2017 the national living wage rate will increase by 30p to £7.50. The Low Pay Commission has projected that up to 2 million workers may benefit from this increase. To be clear, a full-time worker in receipt of the national living wage will see their pay increase by more than £500 over the course of the year. All of the national minimum wage rates will also be uprated above the rate of inflation.

The specific details are as follows. Those aged 21 to 24 will be entitled to a minimum of £7.05, which is an annual increase of 3.2%. Those aged 18 to 20 will be entitled to a minimum of £5.60, which is an annual increase of 3.1%. Those aged 16 or 17 will be entitled to a minimum of £4.05, which is an annual increase of 2.8%. Apprentices aged 19 or those aged 19 and over in the first year of their apprenticeship will be entitled to £3.50, which is the largest annual increase of all the rates at 4.5%.

The accommodation offset was introduced in 1999 to provide protection to workers who live in employer-provided accommodation against an excessive reduction in their income, while giving some recognition of the value of the benefit. Following advice from the Low Pay Commission, the rate will increase from £6.00 to £6.40 per day.

The Government continue to use age-related rates to protect the employment prospects of younger workers. It is felt that prior to the age of 25, people in employment are gaining experience and that the most important thing for them is to be in work and looking at their prospects in the workplace. It should be noted that the Government are setting minimum thresholds only. We recognise and commend those employers who seek to pay younger workers the same as older workers where they can afford to do so.

On the important issues of non-compliance and enforcement, the Government also recognise that as the national minimum wage rates continue to increase, so too does the risk of non-compliance. We are actively taking steps to mitigate non-compliance. We are serious about increasing compliance with minimum wage law and are committed to cracking down on employers who break it. This is why the Government continue to invest heavily in minimum wage enforcement, increasing the budget to £25.3 million for 2017-18, up from £13 million in 2015-16. By using civil sanctions and criminal prosecutions we are keen to send a forceful deterrent message to any employer who wilfully flouts the minimum wage rules. Furthermore, to promote awareness of minimum wage rights and responsibilities among employers and workers, we are spending £1.7 million on a minimum wage publicity campaign, which launched in January this year and is due to ramp up as we approach 1 April. Finally, as I said, to simplify the system, the dates for operating the national minimum wage and national living wage will be aligned, effective from April this year.

This Government want an economy that works for everyone. This is why we are committed to ensuring that everyone shares in our economy's success. The ongoing success of the UK labour market proves that a rising minimum wage can go hand in hand with rising employment. I beg to move.

5.15 pm

Lord Jones (Lab): My Lords, I thank the Minister for her helpful and cogent introduction. Low wages have been the bane of certain regions of the United Kingdom. I think most of all of Wales and the north-east. The minimum wage has been a very good measure for the people of Wales, and Prime Minister Blair has good grounds for being very proud of enacting it. My recollection is that it was opposed in another place, but it is now acknowledged universally as a just, helpful and necessary measure.

Who now chairs the Low Pay Commission and how many members does it have? Although this is a beneficial measure, does the Minister have any statistics to exemplify its beneficial effects, particularly in Wales? How many will benefit from the helpful measure that she has spoken to in the Committee? Will it be of particular help to the tourism industry, which is important and widespread throughout the Principality? How many people in Wales are benefiting from the national minimum wage, and how many will benefit from this measure?

Lord Mendelsohn (Lab): I thank the Minister for her introduction and my noble friend Lord Jones for his contribution, which raises the important question of Wales, and agree that the Minister's case was cogently put. It presents an important annual ritual of ensuring that the national minimum wage and the national living wage are uprated.

I commend the policy and want to say how important this has been as a measure to create a real basis for enhancing the opportunities and life chances of people, and for ensuring that employers are unable to use inequality and asymmetry of power to the detriment of people who are giving up their labour. The way this has been presented and the detail behind it is outstandingly thorough. It is a perfect measure. All the complaints that I have had about other measures are more than adequately addressed by what is an outstanding piece of analysis of not just why this policy decision was made, but previous policy decisions, what alternatives could be chosen and challenges to the assumptions on which it was based. All of this is contained in the accompanying documents to the statutory instrument, which are of outstanding quality. I commend the department for its work in putting it all together and, in particular, the Low Pay Commission, which has done an outstanding job. We are truly blessed to have a mechanism that seems to work well, that people understand and that tends to comes to sensible and just decisions.

I wish to raise two areas for the Minister to consider. First, as we look to expand the apprenticeship programme and increase the number of young people who can move into employment through the use of this mechanism, so that they can adopt skills and become much more focused on the needs of businesses or even public sector organisations now the duty is on them, I would be very interested to know whether any evaluation is being made on what the likely impact of that will be—especially as we may create a cascade effect—to make sure we do not affect the employment opportunities of those at younger ages. I would also like to evaluate whether this is now distorting the opportunities at younger ages, and whether it is worth reviewing in the next review of the national minimum wage and the national living wage.

Secondly, I again ask the Minister whether the enforcement mechanisms she has outlined are sufficient. It is to be welcomed that the Government are applying more resources and a little bit more focus on making sure that companies meet their national minimum wage obligations. It is very instructive to see the number of incidents that take place in large organisations and companies with very prodigious finance departments. It shows a sense not just of non-compliance, but of callous disregard—of the abdication of duty in the most extraordinary fashion. To use an example I mentioned earlier, which I am more than happy to mention again, it is utterly shocking that Debenhams was able to get away with what it did and that its chief executive was able to take his bonus. Look at the explanation of the long-term incentive plans in company reports. Look at the reports to shareholders about remuneration for the senior executives—in particular how it affected the chief financial officer and the chief executive officer—and at the number of consultants that they brought in to make sure they got the right remuneration. I know that they spent time with their remuneration executives to make sure that they can play their games with the board to do this. The sheer fact that they have allowed their employees to suffer in this abject way is absolutely appalling.

Unless we have mechanisms that address the problems of culture, of having effective measures to counterbalance it and incentives that affect people, then we will have this terrible story time and again. I applaud the Government for putting more towards the enforcement, but the measures have to be targeted in the right way. If you run a company, you run it properly. If your duty is to pay people, you pay them properly. If you do not, you bear the consequences.

Baroness Buscombe: I thank noble Lords for their very helpful contributions to this short debate. I begin by responding to the noble Lord, Lord Jones. The measure that was introduced back in I think 1998 was a huge step change in clarity, fairness and respect for people who are low paid.

Lord Jones: It was historic.

Baroness Buscombe: It was historic—the noble Lord is absolutely right. I bear the scars of one who at that time, as vice-chairman of the Conservative Party, had to appear on "Question Time" when the minimum wage came in. The noble Lord is quite right: Her Majesty's then Opposition initially opposed the measure. Being on a television programme such as "Question Time" and having to face an audience while trying to defend our opposition to the minimum wage was one of the most difficult moments in my life. As I said, it was historic and I am so pleased that my party has not only over the years changed its view about this, but taken these measures forward. We are very proud that we now have a national living wage. That is certainly something I feel strongly about.

The noble Lord asked who the chairman of the Low Pay Commission is. The new chairman is Mr Bryan

Sanderson, who was appointed on 17 February for one year. He has eight commissioners working with him.

With respect to Wales, I am pleased to say that an estimated 100,000 workers in Wales will benefit from the national minimum wage and the national living wage. This figure is published on page 79 of the impact assessment. I hope the noble Lord is encouraged by that.

I was very appreciative of the opening remarks of the noble Lord, Lord Mendelsohn. I absolutely agree that the Low Pay Commission should be commended for the work it has done on the development of this policy. Obviously, we continue to work with the commission in this regard.

The noble Lord asked about young people and the likely impact of encouraging more apprenticeships. I have also been involved in the Technical and Further Education Bill, so I am very aware that the Government are encouraging more apprentices, which we hope will have a huge impact on the number of young people in work. I will give a bit more detail on the national minimum wage with regard to young people. The age-related rates protect younger workers, who are more vulnerable in the labour market; for example, in the fourth quarter of 2016 the unemployment rate for people aged 16 to 24 was 12.6%, compared with 3.6% for those aged 25 and over. So we are more cautious for this group and how their wages are set. But we are also conscious of the fact that we need to encourage more young people into work through apprenticeships.

We set minimum pay thresholds. Businesses are free to set higher rates of pay if they can afford and choose to do so. As I have just said, youth unemployment is persistently higher than for those aged 25 and over. For younger workers, the priority in those first years is to secure work and gain experience—something that has always been reflected in the national minimum wage rate structure.

The noble Lord also referred to enforcement. If the Committee will bear with me, I will give a bit more detail about enforcement, given that this is such an important area. I take on board his reference to the situation at Debenhams, which is not acceptable. The Government are committed to cracking down on employers who break national minimum wage law. We are absolutely clear that anyone entitled to be paid the minimum wage should receive it. BEIS is responsible for the policy on national minimum wage compliance and enforcement, and HMRC enforces the National Minimum Wage Act on behalf of BEIS. All businesses, irrespective of their size or business sector, are responsible for paying the correct minimum wage to their staff. The vast majority of responsible employers make sure that they get it right. As I said earlier, we have increased the enforcement budget because we recognise that accurately predicting the true level of non-compliance across the country is difficult. With the increase in wages comes the increased risk of non-compliance. HMRC follows up on every complaint it receives, even those that are anonymous. This includes those made to the ACAS helpline and those it receives from other sources.

I touched on sanctions earlier. There is a civil route, where HMRC conducts an investigation and identifies that there has been an underpayment. A notice of underpayment is then issued, instructing the employer to pay the workers the arrears they are owed and a penalty of up to 200% of those arrears. In addition, we have a system of naming and shaming. Employers risk facing reputational damage through being named and shamed in a government press notice, which is then picked up by local and national press. All employers who have underpaid their workers by more than £100 are eligible to be named. To date, we have named more than 1,000 employers.

I hope I have covered the questions raised regarding these regulations. The Government estimate that more than 2 million workers will directly benefit from the uprating of the national minimum wage and national living wage. The fundamentals of the UK economy are strong and our economy continues to grow. GDP growth was 0.6% in the fourth quarter of 2016—above market expectations—and the economy is currently 8.7% larger than its pre-crisis peak. The labour market has continued to perform well, with robust employment growth in low-paying sectors.

A number of specific points were raised in this debate that I hope I have responded to. The Government are committed to ensuring that work pays and that the lowest paid enjoy the benefits of a strong economy. I commend the regulations to the Committee.

Motion agreed.

Nuclear Industries Security (Amendment) Regulations 2017

Considered in Grand Committee

5.31 pm

Moved by ***Baroness Buscombe***

That the Grand Committee do consider the Nuclear Industries Security (Amendment) Regulations 2017.

Baroness Buscombe (Con): My Lords, I will begin by giving some background information and explaining why we are making these amendments. The UK takes civil nuclear security issues very seriously, including with regard to regulation. Since 1980, the UK has been a signatory to the Convention on the Physical Protection of Nuclear Material—the CPPNM. The convention requires signatories to have in place a robust legislative and regulatory regime to ensure the security of civil nuclear materials stored or in transit. The UK also complies with international guidance and best practice in this field produced by international bodies, in particular the International Atomic Energy Agency.

The Nuclear Industries Security Regulations 2003—NISRs—represent the cornerstone of the United Kingdom's regulatory regime for civil nuclear security. The NISRs place significant obligations on the operators of civil licensed nuclear sites with regard to physical security measures for facilities, nuclear material and the security of sensitive nuclear information. The NISRs

[Baroness Buscombe]
also cover the movement of nuclear material by air, road and rail in the UK and globally in UK-flagged vessels. This legislation requires all civil nuclear operators to produce and implement robust nuclear site security plans, and for transporters of nuclear material to produce transport security statements.

These draft amendments would update the NISRs in four key areas. Their overarching aim is to further enhance civil nuclear security arrangements and ensure that the United Kingdom's regulatory regime remains up to date, comprehensive and robust. This will help ensure that the United Kingdom continues to give effect to its obligations under the CPPNM. I will provide further detail on each of the amendments.

The first amendment is to Regulation 4(1) of the NISRs, which requires that a nuclear site security plan approved by the ONR is in place for each nuclear site. However, at present the NISRs do not specify on whom this obligation is placed. The amendment will make it the responsibility of the designated "responsible person" for the nuclear site, as defined in the NISRs, to ensure that there is an approved security plan in place at all times. In tandem with this, a related amendment to Regulation 25 makes it a criminal offence for the responsible person to fail to meet their obligations under Regulation 4(1) as amended. The creation of this offence underlines the security imperative that the Government place on nuclear operators maintaining up-to-date security plans that have the approval of the independent regulator. In combination, the amendments to Regulations 4(1) and 25 will add clarity to the regulatory regime by making the responsible person accountable for ensuring that their site has approved nuclear security measures in place at all times. The implications of creating a new criminal offence have been fully considered and the Ministry of Justice has approved the measure.

We are also amending Regulations 4(3)(d) and 16(3)(c). These amendments are aimed at further enhancing industry information security and preparedness for cyber-related incidents. It will be a requirement for nuclear site security plans and transport security statements to set out the steps to be taken in the event of the loss or theft of or unauthorised access to sensitive nuclear information. Requiring duty holders to outline these contingencies will help ensure that risks associated with information security and cyberattacks are identified from the outset and effectively managed using measures approved by the ONR.

We are also making amendments to Regulations 9, 17(3) and 22(7), which relate to personnel security. Ensuring robust measures are in place to combat the potential threat that insiders pose to the civil nuclear industry is, of course, a key priority for the Government and the regulator. These amendments are intended to provide the ONR with greater flexibility in determining whether nuclear premises' relevant personnel are suitable in security terms. Instead of solely approving all relevant personnel itself, the ONR will be able to assess and approve the industry's broader personnel security arrangements; for example, by examining the effectiveness of review and aftercare arrangements for personnel working in the sector. This will allow the ONR to approve processes to be used by duty holders to determine whether relevant personnel are suitable in security terms. This will involve consideration by the ONR of whether the measures used by duty holders are in accordance with Her Majesty's Government's personnel security policy. We are also making an amendment to Regulation 22(5)(a) to remove a reference to guidance published by the ONR on security classifications that has now become obsolete.

The Department for Business, Energy and Industrial Strategy conducted an industry consultation on these amendments between 24 June and 22 July 2016. In total, 19 responses were received from a range of industry stakeholders. On the basis of these responses, department economists have forecast one-off administrative costs to the civil nuclear industry of less than £100,000 arising from the changes. This assessment has been approved by the Regulatory Policy Committee. I consider the security benefits arising from these changes to far outweigh the costs.

In parallel to the amendments, the ONR intends to issue revised security guidelines to the civil nuclear industry. These guidelines, known as the security assessment principles, are closely aligned to emerging threats to nuclear security, especially in relation to cybersecurity and information assurance. The amendments that I have outlined will complement the revised guidelines. I therefore commend these draft regulations to the Committee and beg to move.

Lord Jones (Lab): My Lords, I thank the Minister for her clear exposition on such a serious measure and offer support for the draft instrument. There are two nuclear power stations in Wales: Trawsfynydd in the wilds of Meirionnydd and Wylfa in Môn Mam Cymru—Anglesey. Trawsfynydd may have reached the end of its productive life, but the hope is that Wylfa reactor 2 will come into being at an appropriate time. These stations in the far north-west of the lovely land of Wales are hugely important for employment, well-paid jobs and skills, and generate supporting jobs distances away from the plants.

How many people at each of those stations are engaged in security—if the Minister is allowed to give me that answer? I think it is a reasonable question. How many nuclear security police are there at each of those plants? I have read the Explanatory Memorandum and the instrument. When the stations were built, it was inevitable that road improvements would have to be made, and the rail links became ever more important—for obvious reasons when we consider nuclear waste.

In paragraph 7, headed "Policy background", of the Explanatory Memorandum, paragraph 7.2 refers to,

"an approved nuclear site security plan be in place for each nuclear premise. The current requirement does not specify upon whom the duty is placed. These regulations clarify the position by specifying that it is the responsible person in relation to each nuclear premise who has the duty to ensure that there is an approved nuclear site security plan in place, and make it a criminal offence for the responsible person to fail to do so".

I have mentioned two nuclear sites in Wales. What would be the rank and description of such a person referred to in paragraph 7.2?

I spent nearly 10 years on the Intelligence and Security Committee, and think I am asking responsible questions, but I would understand if the Minister

could not immediately offer an answer or felt that she had to give me a reason why she could not give an answer.

5.45 pm

Lord Grantchester (Lab): My Lords, I thank the Minister for her introduction to the measure before the Committee. It is not contentious, and there is generally no difficulty in approving measures that seek to improve safety and security. All the necessary information has been helpfully provided in the Explanatory Memorandum. I thank my noble friend Lord Jones for his comments on the measure in relation to Wales, and look forward to Wales continuing to contribute in the development of the nuclear industry, most notably, perhaps, through the development of modular reactors.

Although we recognise that the security aspect of all operations at civil nuclear sites is under constant review and that the measure to upgrade the regulations is not in response to any particular occurrence, nevertheless, anxiety has been expressed recently about some incidents across both civil and defence aspects in the nuclear industry, most notably the straying of a test missile in the Atlantic. While the measure refers to civil nuclear sites, the regulatory triage assessment states that defence sites are exempt. I am sure the Minister will say that we must not misread the exemption but will she confirm that there are indeed specific regimes and reviews in place for all defence sites, both fixed and mobile, where analogous conditions would be covered, such as Aldermaston and Harwell? Are these subject to separate SIs?

We certainly agree that the UK has one of the most robust security frameworks. What assurances regarding this high standard can the Minister give to those of a more doubting nature, when we do not discuss lessons learned from any mishap or even recognise that mishaps and deaths have occurred? We agree with and approve the measures being implemented in the regulations, especially the upgrades necessary to improve cybersecurity, against a backdrop of reports on the activities of Russia, which we trust are not being directed at or compromising the civil nuclear industry. The protocols in the measure to cover this scenario are vital and welcome.

The Minister and the Explanatory Notes have both highlighted that each nuclear premises must have its own approved site security plan in place. While I appreciate that every site will need a distinct plan in so far as geographical layouts may differ, I wonder how far different sites may have different practices, as the Minister in the other place stated regarding this measure. Can the Minister explain whether different plans carry any implications of differing standards, which could give rise to confusion or misunderstandings between sites and practices that could compromise security? I concur that the objective of the regulations is to raise the bar on security across all sites. Is there an appraisal of the differences between sites and why there are any, so that the differences are monitored and controlled?

My final point concerns the treaty background to the regulations. I understand that being a signatory to the Convention on the Physical Protection of Nuclear Material requires the UK to have in place the legislative and regulatory regime to ensure the safety and security of civil nuclear materials stored or in transport. Furthermore, the treaty sits outside Euratom, of which the UK is also a member, and Euratom has signed up to the treaty. Without wishing to encroach on tomorrow's proceedings on the amendments to the European Union (Notification of Withdrawal) Bill, there is some debate over whether Euratom is a separate entity from the EU, and over the UK's membership of it. The Explanatory Memorandum to that Bill states that the UK's departure from the EU will trigger an automatic leaving of Euratom as it is part of the same treaties. Whether or not this is the case, I ask the Minister: how will the UK find a way back into Euratom? What will this look like?

I understand that the Government recognise the importance of Euratom and wish to have the closest possible relationship with it and its members. I thought that the Minister in the other place was rather splitting hairs—if I may use the word "splitting" in this context—when he stated that Euratom,

"does not have a role in setting security standards, regulation or inspection of UK civil nuclear security arrangements".—[*Official Report*, Commons, Fourth Delegated Legislation Committee, 21/2/17; col. 7.]

While this measure is implemented discretely in the UK, it is vital that the UK continues to participate in Euratom; JET, which is based in the UK and employs many EU nationals; and the International Atomic Energy Agency—IAEA—an organisation set up under the auspices of the United Nations and based in Vienna. Having said all that, I am content to approve the regulations before the Committee.

Baroness Buscombe: I thank all noble Lords who have contributed to the debate on this Motion. First, I turn to the noble Lord, Lord Jones, although it is with some trepidation because I am a little afraid of trying to pronounce the names of the stations he referenced: Wylfa and Trawsfynydd—that is my attempt.

Lord Jones: Splendid!

Baroness Buscombe: I thank the noble Lord for that. I welcome what he said about supporting jobs on those sites. He asked a number of questions, including about the number of people on those sites. I am not at liberty to say exactly how many people are employed. However, for example, the rank and description of the person described in paragraph 7.2 of the Explanatory Memorandum will be the holder of the nuclear site licence and this will vary by establishment.

The noble Lord also asked about personnel security. Nuclear sites must comply with personnel security vetting requirements and all workers in the sector must be cleared to a level commensurate to their required access to nuclear material and sensitive nuclear information. Given the noble Lord's past experience in this area, he will appreciate that it is very difficult for me to give much detail on each site.

Lord Jones: If, on further thought, the Minister may be able with the assistance of her officials to write to me, I would not object to that.

Baroness Buscombe: Of course I would be happy to write, if I fail to provide the noble Lord with sufficient reassurance.

[Baroness Buscombe]

All staff have responsibility for ensuring effective security at civil nuclear sites. Having an effective security culture is, of course, very important. There will be a number of security-specific roles at civil nuclear establishments, and these vary depending on the site. All sites are subject to the same requirements and standards. In line with the graded approach, the level of security at each site will be determined by the nature of materials and equipment and the information held.

I welcome the very positive response from the noble Lord, Lord Grantchester, to the measure and agree that it is non-contentious. He asked a number of questions, and I will deal first with Euratom. If he will allow me, I want to spend a few moments on this because it is important to be as clear as I can. Leaving Euratom is a result of the decision to leave the EU, as they are uniquely legally joined. However, the UK supports Euratom and will want to see continuity of co-operation and standards. We remain absolutely committed to the highest standards of nuclear safety, safeguards and support for the industry. Our aim is clear: we want to maintain our mutually successful civil nuclear co-operation with Euratom. The statutory regime for civil nuclear security is based solely on UK legislation. There are no Euratom or EU directives relating to nuclear security that the UK is required to comply with. In fact, the EU has no competence in relation to nuclear security. Euratom has no role in setting security standards, regulations or the inspection of security arrangements in the UK civil nuclear sector.

The Government do not comment on specific security or intelligence arrangements at individual sites. The most sensitive commissioned civil nuclear sites and transportations of nuclear materials in the UK are protected by the Civil Nuclear Constabulary. The CNC is a specialised, dedicated elite firearms force, with a Royal College of Policing firearms licence, charged with the protection of the most sensitive civil nuclear sites and nuclear materials in England, Scotland and Wales.

The noble Lord, Lord Grantchester, asked one other question about defence sites such as Aldermaston; indeed, it is a question I asked officials last week. The answer is categorically no, they are not subject to this SI and are not a part of these regulations. There is a separate regulatory regime that applies to defence sites. I hope I have been able to respond sufficiently fully.

Lord Grantchester: I wonder if I can tempt the Minister with one further question I was concerned about: each site having a specific plan and whether differences between sites meant that there were different practices that could lead to a misalignment of security standards.

Baroness Buscombe: I thought I had the answer in my notes.

Lord Grantchester: If the Minister wants to write to me at a later date, I will understand.

Baroness Buscombe: I apologise to the noble Lord. Apparently I have been given the answer to his question but it seems to have chosen to disappear. Ah, it is under the folder. Good. All sites are subject to the same requirements and standards. In line with the graded approach, the level of security at each site will be determined by the nature of materials, equipment and information held.

On that note, I hope I have sufficiently responded to the noble Lords. I thank them for their helpful remarks, and I hope they will agree that the responses I have given have provided the necessary assurances for them to approve this straightforward statutory instrument. As I said in my opening remarks, the overarching aim of these updates is to further enhance civil nuclear security by ensuring that the UK's regulatory regime remains up to date, comprehensive and robust.

Motion agreed.

Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017

Considered in Grand Committee

5.58 pm

Moved by ***Baroness Neville-Rolfe***

That the Grand Committee do consider the Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017.

The Commercial Secretary to the Treasury (Baroness Neville-Rolfe) (Con): My Lords, the regulations we are looking at today help to ensure that we have an effective system in place to handle the failure of investment banks. Our approach simplifies and speeds up the special administration process and reduces the cost of the administration for clients and for creditors.

It is of course worth recalling that the collapse of Lehman Brothers taught us that our insolvency regime was not capable of dealing effectively with a failure of a large and complex investment bank. Against that background, we introduced the investment bank special administration regime in 2011 with the aim of changing the insolvency rules so that they more adequately protected the interests of clients. The legislation, rightly, includes a provision for review. I pay tribute to Mr Peter Bloxham, an insolvency lawyer who was appointed to lead this and whose final report was laid before Parliament in 2014. The purpose of the regulations is to improve the functioning of the regime by implementing the Bloxham review recommendations and learning from investment bank insolvencies in recent years.

The reforms we are making seek to strengthen the administration process in three ways. First, the regulations make it easier for an administrator to transfer client assets to an alternative firm. This will benefit clients in the event a firm fails by ensuring they have continued access to investment services. The regulations provide an administrator with the power to transfer the whole investment firm to another institution in spite of certain restrictions which can delay or disrupt this, such as the need to obtain client consent from all affected clients before the transfer can take place. Importantly, the regulations include key safeguards to protect clients

and their interests. Clients will be able to request the return of their assets following the transfer, while client risk-management arrangements that the firm has in place will be protected.

Secondly, the regulations make the administration process simpler and quicker by strengthening and extending the bar date mechanism. This is a procedure that gives the administrator the power to set deadlines for clients to submit claims for the return of their assets. In the past, some administrators have been unable to close the client estate following the bar date procedure, allowing the administration process to drag on. These regulations therefore introduce a "hard" bar date, a power which enables the administrator to return assets more quickly to clients. I am very grateful to the chair of the House of Lords Secondary Legislation Scrutiny Committee, my noble friend Lord Trefgarne, for the time his committee has dedicated to reviewing the regulations. The committee paid special attention to the bar date mechanism and I always welcome its expertise and engagement on these sorts of provisions.

Thirdly, the regulations provide greater legal certainty for clients and creditors. This addresses a key weakness in the existing regime. One key change is clarification of a client's right to receive interest on their claims during the administration process. We are taking away the perverse incentive to engage in arbitrage between client and creditor estates that occurred in previous administrations. In addition, the regulations clarify when an administrator needs to go to court to seek a direction on certain matters. Taken together, these reforms improve the speed at which assets can be returned to clients and enable the administration process to operate both more efficiently and effectively.

The changes we are making were broadly supported in consultation with the different parts of the market that would be affected by the failure of an investment bank. We also took advice from the Banking Liaison Panel on specific aspects of the regime, particularly the safeguards in place. I regret that we did not publish a consultation response document. However, in the Explanatory Memorandum and impact assessment accompanying the regulations, we presented a summary of the eight responses we received. I also note that we did not carry forward a duty on firms to co-operate with the administrator. Following discussions with the Joint Committee on Statutory Instruments we assessed that existing statutory duties that require firms to provide information and documents to the administrator would be effective. These existing duties will enable clients to access their assets quickly and efficiently without imposing an additional and overlapping duty on firms.

These regulations are an important step forward. They are a reflection of the lessons we have learned from the past failures of investment banks but they are also a reflection of the strong future of our banking and financial system. With the reforms we are proposing today, we will be better able to ensure the financial security of the UK and continue London's role as a leading financial centre. I beg to move.

Lord Tunnicliffe (Lab): My Lords, I thank the Minister for introducing this order. As she has already outlined, the purpose of this instrument is two-fold: to correct the definition of "investment bank" and to extend elements of the special administration regime, the SAR, which is the administration procedure for insolvent investment banks. These measures are part of an effort to improve the regulations and processes that govern the financial services sector. We oppose none of the measures the Government are proposing to introduce, but I have a number of points that I hope the Minister can clarify.

Part 2 of the instrument alters the definition of "investment bank" to include alternative investment funds and undertakings for collective investments in transferable securities. It was the intention of the original legislation that such firms be included in the SAR. However, they have fallen out of scope as an unintended consequence of the introduction of other legislation. As has been said, this is merely a correction. In practical terms, it increases the number of banks covered by the legislation from 700 to 1,000. May I be assured that this rise has been taken into account when considering the resources needed to communicate changes to the SAR?

I will focus the bulk of my time on Part 3 of the regulations. After much discussion, the Banking Act 2009 did not include any specific reform of investment bank insolvency. However, it provided an enabling power to pass new regulations that had to be reviewed within two years. Accordingly, the special administration regime was introduced in the Investment Bank Special Administration Regulations 2011. Peter Bloxham carried out a review and published recommendations in January 2014. This instrument implements some of those recommendations.

The most substantive change the regulations will introduce is changing the "soft" bar date to a "hard" bar date. Under the current legislation, claimants who fail to claim before the bar date can still receive client assets. The introduction of a "hard" bar date would remove this right. This seem perfectly reasonable. The client asset can be closed more swiftly and at a lower cost. However, the key question I have about this switch is how much longer the process of insolvency will last as a result. If I am not mistaken, the "hard" bar date will not be automatic. The administrator will have to apply to the court. For the court to accept a "hard" bar date, it must be,

"satisfied that the administrator has taken all reasonable measures to identify and contact persons who may be entitled to the return of client assets".

How long do the Government expect the administrator will need before it can collate all this information?

Furthermore, new Regulation 12D(2)(b) sets out the criteria for when the court can grant an application for a "hard" bar date. The first of these criteria is that there can be,

"no reasonable prospect … that the administrator will receive claims for the return of client assets after that date".

How can the administrator be sure that there is "no reasonable prospect"? Surely this will require extensive research. Again, will this not result in delay before the administrator is confident it has a strong case for the court? The longer a case of insolvency drags on, the greater the uncertainty, and with uncertainty the prospect of market instability.

[Lord Tunnicliffe]

The next issue is one my honourable friend in the other place the Member for Stalybridge and Hyde raised, relating to the mechanisms in place before assets are pooled, which could assist in a more efficient and reliable return on client assets. The Economic Secretary to the Treasury in the other place stated in response to my honourable friend's questions that,

"the FCA has taken a number of steps to improve firms' record keeping. These reforms have been extensively consulted on with practitioners who have experience in dealing with pooled accounts".—[*Official Report*, Commons, Second Delegated Legislation Committee, 7/2/17; col. 8.]

I ask the Minister: what specific steps have been taken by the FCA and has it seen a reduction in the rate of regulatory non-compliance cases it deals with as a result?

I turn to the issues raised by the Secondary Legislation Scrutiny Committee. Why have the Government not published the full consultation response to the Bloxham review? I note the Minister's apology but I hope she can go into a little more detail. I have read the explanation, as has the committee, and I have to say that neither it nor I are convinced by the answers so far. The Government state that:

"The areas raised in the consultation were largely technical in nature".

Surely this is exactly the place where such technicalities should be debated and scrutinised. I look forward to hearing a more detailed response from the Minister as to why the Government feel it is appropriate to flout their own consultation principles.

My final query for the Minister relates to the procedures used in the event that the administrator's conduct is challenged. The new sub-paragraph (e) in paragraph 14 states that the FSCS, the financial services compensation scheme:

"may make an application … on the grounds that the administrator is not performing the duties … as quickly or as efficiently as is reasonably practicable".

I note that the new Section 10A(b) inserted by the order says the administrator must "keep the FSCS informed", but what does the Minister anticipate that will mean in practice? Surely in order for the FSCS to be confident that the administrator is not fulfilling his statutory duty, he must have detailed knowledge of the workings of the operation. What criteria will be used to judge whether an administrator has failed, and by whom? If the administrator is found to be inappropriate, whose responsibility is it to complete the insolvency? I look forward to the Minister's response.

Lord James of Blackheath (Con): My Lords, may I intrude a word into this debate? There is an aspect of 2008 that has never been corrected, and which did a great deal to disguise the extent of the insolvencies existing at that time. It might now perhaps be possible to squeeze a solution into something like this.

There is a practice that was prevalent in cases such as Bradford & Bingley and Northern Rock: if a bank or building society had a house on which it had an outstanding loan of, say, £10,000, and the house was worth £1 million, it entered the whole £1 million as an asset on its balance sheet, although it had no legal access or right to that surplus value. Banks did that solely to emphasise the extent of the solvency that they could demonstrate for their loans, but it made a complete distortion of what the balance sheet really was and misled people into letting them trade on for too long. Nowhere have we ever corrected this in any of the accounting rules. This may be the last chance saloon.

Baroness Neville-Rolfe: My Lords, I thank the noble Lord, Lord Tunnicliffe, and I will try to address his various questions. I am very grateful to my noble friend Lord James for his comments, and I will see if I can answer his question. If I am not able to do so today, I will certainly write.

We all share an interest in ensuring that we handle the failure of an investment bank effectively. That is not only for the benefit of any clients or creditors who will be involved but to the benefit of our whole financial system. Since the investment bank special administration regime was introduced in 2011, firms operating under the procedure have given us valuable insights into how we can improve it, and in particular how we can improve the ability of clients to receive their assets as quickly as possible in the event of a bank failure. The return or transfer of client money could take as little as 30 days, but closing a whole estate can be very complex and is obviously very unlikely to occur in less than a few months.

The noble Lord, Lord Tunnicliffe, asked whether the Treasury had considered the number of banks in scope of this legislation. He referred to the number going up from 700 to 1,000, and he was concerned about the communication resource in relation to that. In fact administrators believe that the additional costs of familiarising themselves with the regime will be negligible; indeed, the impact assessment shows that there are thought to be savings from these changes. In the majority of cases, the amendments provide helpful legal certainty.

6.15 pm

On the point about consultation, as I said and the noble Lord acknowledged, I regret that we did not publish a response document. I note his concerns and those of the committee. During the consultation period, we had extensive engagement with key stakeholders. These discussions are summarised, as I said, in the Explanatory Memorandum and impact assessment which accompany the regulations. We also consulted the Banking Liaison Panel on specific aspects of the special administration regime, and I undertake to ensure that we publish the BLP's formal advice and learn from this experience.

The noble Lord also asked about the introduction of a hard bar date. The Government do not propose to change the soft bar date to a hard bar date. The hard bar date is a new mechanism designed to cut down on the time needed for the distribution process. The existing regime already provides the administrator with the power to set a soft bar date for custody assets. The regulations extend the soft bar date to client money and introduce the new hard bar date for custody assets and client money.

The noble Lord asked what impact a hard bar date would have on the length of the insolvency process. As the law now stands, the court will already want to be

satisfied that there is no reasonable prospect of new claims being received before approving a transfer of residual assets to the failed bank's estate for distribution among unsecured creditors, including any clients who have not yet claimed. Under the hard bar date mechanism, the administrator will instead apply to the court for the approval of a final date for the submission of clients' claims. As these insolvencies are dealt with on a case-by-case basis by administrators, the Government cannot estimate how long the process will last, but the hard bar date provides an additional tool which we believe will speed things up. I cannot get the noble Lord a clear answer, but I am confident that the change will be beneficial.

The noble Lord also asked what steps the FCA has taken to improve firms' record-keeping and, furthermore, whether it has seen a reduction in the number of non-compliance cases as a result. Through updates to its rules on holding client assets, FCA-supervised firms now have to meet higher reporting and record-keeping requirements. The FCA has found an increased level of awareness of the rules and more co-operation with a view to compliance.

I come to the question of what it means for the administrator to keep the Financial Services Compensation Scheme informed and whether there are any criteria by which to judge the administrator's conduct. In practice, in any given administration, it will be for the FSCS to determine, in co-operation with the administrator, the adequate level of information that it requires from the administrator to carry out its functions. If the FSCS feels that an administrator is not co-operating in the way envisaged, it may apply to the court for an order requiring the administrator to do what is necessary. Of course, the court has wide powers, including power to remove the administrator from office.

The criteria for making a challenge by the FCA or clients are that the administrator is acting or proposes to act unfairly in a way that harms the interests of the applicant or otherwise is not performing its functions as quickly and efficiently as is reasonably practicable. It is for the court to assess the evidence and the case made by the person who challenges the conduct of the administration. Under the SAR, the court has the same power as in an ordinary company administration to regulate the exercise of functions or require the administrator to take specified steps. The court may of course also replace an administrator removed from office to ensure that the administration is concluded properly.

To try to respond to my noble friend Lord James of Blackheath, it would be outside the scope of the special administration regime to make provision about the accounting practices of banks as deposit-takers and building societies. There is a limit to what I can do to help him today, but I am grateful to him for raising the point with me.

Lord James of Blackheath: May I suggest that the matter could be taken up with the Accounting Standards Board?

Baroness Neville-Rolfe: I can certainly agree to talk further to my noble friend, and if talking to the Accounting Standards Board seems to be a good way forward, I would be happy to do that. I am grateful to him for raising the point.

I conclude by saying that these regulations make important reforms to strengthen the investment bank special administration regime. I hope the Committee will join me in supporting our efforts and this Motion.

Motion agreed.

Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2017

Considered in Grand Committee

6.20 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Mesothelioma Lump Sum Payments (Conditions and Amounts) (Amendment) Regulations 2017

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Henley) (Con): My Lords, in moving this Motion I will speak also to the draft Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017. I am required to confirm to the Committee that these provisions are compatible with the European Convention on Human Rights, and I am happy so to do.

The two statutory instruments will increase the value of lump sum amounts payable under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 and the diffuse mesothelioma scheme set up by the Child Maintenance and Other Payments Act 2008 by 1%. These new amounts will be paid to those who first satisfy all the conditions of entitlement on or after 1 April 2017.

The two schemes stand apart from the main social security benefits uprating procedure and there is no legislative requirement to review the level of payments each year. None the less, I am happy to announce the increase in the amounts payable for 2017 by the consumer price index. This is the same 1% rate that is being applied to industrial injuries disablement benefit and some other social security disability benefits under the main social security uprating provisions.

The Government recognise that people suffering from diseases as a result of exposure to asbestos, or one of a number of other listed agents, may be unable to bring a successful claim for civil damages in relation to their disease. This is due mainly to the long latency period, often stretching back decades, between exposure and onset of the disease. Therefore, by providing lump sum compensation payments through the two schemes, we fulfil an important role for sufferers of certain dust-related diseases. The schemes aim also to ensure that sufferers receive compensation in their lifetime while they themselves can still benefit from it, without first having to await the outcome of civil litigation.

Improved health and safety procedures have restricted the use of asbestos and provided a safer environment for its handling. However, the historic legacy of the

[Lord Henley]
common use of asbestos is still with us. That is why we are ensuring that financial compensation from both these schemes is available to those affected.

I will briefly summarise the specific purpose of these lump sum compensation schemes. The Pneumoconiosis etc. (Workers' Compensation) Act 1979, which for simplicity I will refer to as the 1979 Act scheme, provides a lump sum compensation payment to those who suffer from one of five dust-related respiratory diseases covered by the scheme who are unable to claim damages from employers because they have gone out of business, and who have not brought any action against others for damages. The five diseases covered by the 1979 Act scheme are diffuse mesothelioma, bilateral diffuse pleural thickening, pneumoconiosis, byssinosis and—if accompanied by asbestosis or bilateral diffuse pleural thickening—primary carcinoma of the lung.

The 2008 mesothelioma lump sum payments scheme was introduced to provide compensation to people who contracted diffuse mesothelioma but who were unable to claim compensation for that disease under the 1979 Act because, for example, their exposure to asbestos was not due to their work. The 2008 scheme also allows payment to be made quickly to diffuse mesothelioma sufferers at their time of greatest need. Under both schemes a claim can be made by a dependant if the sufferer died before being able to make a claim. The rates payable under the 1979 Act are based on the level of disablement assessment and the age of the sufferer at the time the disease is diagnosed. The highest amounts are paid to those diagnosed at an early age and with the highest level of disablement. All payments for diffuse mesothelioma under the 1979 Act scheme are made at the 100% disablement rate—the highest rate of payment. Similarly, all payments under the 2008 scheme are made at the 100% disablement rate and are based on age, with the highest payments going to the youngest sufferers.

The Committee may like to know how many claims we received and the amounts paid out under these two schemes. In the last full year, from April 2015 to March 2016, 3,520 people received payments under the 1979 Act at a cost of £45.9 million, and 400 people received payments under the 2008 scheme at a cost of £8 million. The total amount of compensation paid out under both schemes during this period amounted to almost £54 million. The forecast for the current year, 2016-17, is that 3,592 people will be paid under the 1979 Act scheme and some 420 people will be paid under the 2008 Act scheme. The estimated total amount of compensation under both schemes is likely to be £54.2 million.

I am aware that in previous debates on increasing the value of lump sum payments paid under these two schemes, noble Lords have raised the subject of equalisation of payments between sufferer and dependant claims. However, we do not intend to equalise payments this year. Instead, we will continue to keep this matter under review and consider equalisation once resources allow.

Around half the payments made under the 1979 Act scheme are made for diffuse mesothelioma. I am aware that the occurrence of diffuse mesothelioma is a particular concern of many noble Lords, given that diffuse mesothelioma-related deaths in Great Britain are at historically high levels. Diffuse mesothelioma has a strong association with exposure to asbestos, and current evidence suggests that around 85% of all male mesotheliomas are attributable to asbestos exposures that occurred through work. Those diagnosed with diffuse mesothelioma usually have a short life expectancy —generally between nine and 12 months—with the sufferer becoming severely disabled soon after diagnosis.

The number of cases reflects the long latency period of the disease, which can take decades to become apparent. Latest available information suggests that there will continue to be around 2,500 diffuse mesothelioma deaths per year for the rest of this decade before annual cases begin to fall, reflecting a reduction in asbestos exposures following its widespread use between 1950 and 1980.

These regulations increase the levels of support through the statutory compensation schemes and I am sure the Committee will agree that, while no amount of money can ever compensate individuals and families for the suffering and loss caused by diffuse mesothelioma and the other dust-related diseases covered by the 1979 Act scheme, those who are suffering rightly deserve some form of monetary compensation. These statutory schemes deliver an essential part of it. I commend the increase in the payment scales and ask the approval of the Committee to implement them. I beg to move.

6.30 pm

Lord James of Blackheath (Con): My Lords, I am sorry to interfere again but when I read this I got a nasty jangle in the back of my head which said that this does not necessarily fit with what we discussed before, in the days when my noble friend Lord Freud was bringing the Bill through. I remind your Lordships that at that time, I initiated direct discussions with the Royal British Legion on exactly this subject because it is the expert on what is happening, who is suffering and what their state is.

Sadly, the Royal Navy is the principal biggest culprit. Worst affected of all are those who served on the Royal Yacht "Britannia", which is a terrible scandal. Nearly everybody who served or did anything in the engine room of the Royal Yacht "Britannia" is now either dead or dying from diffuse mesothelioma. The Royal British Legion set up a special department to deal with this, because the tragedy is that people's wives and children have got it, too, because you have only to wash the coat of somebody who has this to be a condemned person from that moment on. The Royal British Legion has gone to great lengths to make sure that it is monitoring and looking after the wives, families and dependants of these dreadfully stricken people.

At the end of that debate, my noble friend Lord Freud gave an undertaking that he would not do anything that initiated payment structures which interfered with or were diminished by the presence of the Royal British Legion payments, so that people would get the maximum benefits for their hugely distressed situations; that he would look after things to ensure that nothing we did cut across the Royal British Legion's process, and vice versa; and that it would be wholly co-ordinated. The jangle I got in my head was because I have never

heard whether that has happened, and that is why I am asking for some assurance that my noble friend's undertaking was fulfilled. What is its status today, please? It really matters.

Lord McKenzie of Luton (Lab): My Lords, I thank the noble Lord, Lord Henley, for his introduction and explanation of the regulations. I am sorry that the noble Lord, Lord James, has had a nasty jangle in the back of his head. Clearly, he is concerned about undertakings made in respect of the Royal British Legion. I worked on this—not alongside the noble Lord, Lord Freud, but on the opposite side—and I do not think that anything has arisen in the course of lots of changes to these provisions over a number of years which would be in breach of the undertaking he gave the noble Lord, but it is not for me to defend a former Minister.

Lord James of Blackheath: My Lords, I will put the noble Lord's assertion to the test with one simple question: can we say with absolute certainty that not one penny from the Royal British Legion has been withheld or interfered with by us through the conflict between its initiatives and ours, and that everybody has gone ahead with the full funding under both arrangements?

Lord McKenzie of Luton: No, I cannot possibly say that. It is not my role as a shadow Minister. If anybody is going to give those undertakings, it is the noble Lord, Lord Henley, and I wish him well.

As we have heard, the regulations cover various compensation schemes, including the ones for pneumoconiosis and other dust-related diseases covered by the Pneumoconiosis etc. (Workers' Compensation) Act 1979, and, separately, mesothelioma. The payments are uprated by 1%, which is the September 2016 CPI rate of inflation. One might say that this is a meagre sum, just missing the surge in inflation generated by the decline in the rate of sterling post the referendum, although we acknowledge that there is no statutory obligation to uprate the compensation schedules and that the 1% aligns with the uprating of industrial injuries benefits, as we have heard. Obviously, we support the regulations but I have some questions.

We have no impact assessment for the instruments, although the Explanatory Notes indicate that in the year to March 2016 some 3,520 people made a claim under the 1979 Act, including 310 claims for dependants. I think my question may already have been answered. Can the Minister tell us how many of these claims were successful and can we have an analysis of the various categories of dust-related diseases? I think the noble Lord referred to 3,592 payments. The explanatory memorandum talks about claims. Maybe it is a question of nuances of terminology, but it would good to know the actual number of successful claims. Can we also be provided with an analysis of the amounts of the various claims, how these were funded and the extent to which there has been or will be clawback of social security benefits?

So that we can get the overall picture of the numbers suffering from these dust-related diseases—other than mesothelioma—can we have some detail on what has been covered by employer liability insurance? The ELTO 2015 annual report—when will we get an updated one?—shows an improvement in successful inquiries but apart from mesothelioma itemises only asbestosis and asbestosis-related illnesses. Further, the ELTO report does not cover successful claims which might be made directly to insurers outside of ELTO. Can we be provided with a complete picture of the number of workers entitled to lump-sum compensation arising from the 1979 Act for the latest period available? Can we also be provided with details of how many are missing out on compensation?

The position concerning mesothelioma is different, as we have heard. Diffuse mesothelioma is a fatal cancer of the lining of the lungs or abdomen caused almost exclusively as a result of exposure to asbestos. Symptoms and diagnosis may not emerge until 30 or 40 years following exposure—it is a long-tail disease—and this obviously exacerbates difficulties in identifying relevant employers and employer liability insurers. A number of steps have been taken in recent times to improve access to compensation for sufferers of this terrible condition. In 2008 the previous Labour Government introduced the scheme which is the subject of the regulations before us today. It is a no-fault scheme, so does not require a work-related nexus or proof of negligent exposure to asbestos. It has tended to be illustrated, as the noble Lord, Lord James, said, by exposure caused by washing somebody's work clothes.

After an initial differential, the rates of compensation under the 2008 Act—for sufferers and dependants—have been separately aligned with the 1979 Act amounts for those with 100% disability, although, as the noble Lord said, there is still the differential between payments in respect of dependants and sufferers. Again, we have no impact assessment, although the Explanatory Note tells us that some 400 people made a claim in the period ended March 2016, including 10 dependants. How many of these claims were successful? How were they were funded? I seem to recall that the original concept was for funding to come from civil claim recoveries. What is the current position? If we are to see the overall picture here, albeit not strictly covered by these regulations, we should consider the further important developments led by the noble Lord, Lord Freud, with the co-operation of the insurance industry. These include the Employers' Liability Tracing Office, which focuses on assisting claimants to identify an appropriate employer liability insurer. While the 2015 report shows the inquiry success rate improving, it is far from 100%. For mesothelioma, it is just below 77%.

So onward to the diffuse mesothelioma payment scheme—a scheme of last resort—which started making payments from July 2014. It seeks to compensate those negligently exposed to asbestos while at work but who cannot trace the responsible employer or insurer. The scheme is funded by a levy on the gross written premiums of those insurers writing employer liability insurance. It was acknowledged that the insurers could not commit to a levy level above 3% of gross written premiums. In its first year, net payments of £24 million were made, with an average amount of £122,000. The tariff payments, originally at 75% of average civil claims, have risen from 80% to 100%. There is an oversight committee, which my noble friend Lady Donaghy chairs.

[Lord McKenzie of Luton]

In respect of mesothelioma entitlements with an employment nexus, can the Minister let us know for the most recent period available the total number of successful compensation claims and the amounts achieved via employers or insurers, either directly or using the tracing office, and the total number of tariff payments made under the payment scheme? Has the DWP made an assessment for the most recent period of the number of mesothelioma sufferers who have not been able to access either compensation or a tariff payment? What do we understand the reason to be for the shortfall between the expected claims to the payment scheme and outturn for the most recent period? The Minister did give us an updated forward projection of the incidence of mesothelioma: 2,500 cases for the rest of the decade. The Minister is probably aware of the extensive debates we have had on this issue and of the focus on funding for research for sufferers. That has been a positive development.

As a final point, ELTO has made good progress in tracing policies. It is suggested that better access to the employer reference number from HMRC would assist in this. There was an attempt to amend a recent Bill to try to secure that, but it was unsuccessful. Will the Minister tell us what is happening on this issue?

Lord Henley: My Lords, I thank the noble Lord, Lord McKenzie, and my noble friend Lord James of Blackheath for their comments. The noble Lord, Lord McKenzie, asked a number of fairly detailed questions, a great many of which will, I suspect, be far better dealt with in correspondence, if the noble Lord will accept that. The answers will come down to rather detailed figures because he asked about the analysis of the levels of claims, which obviously depends on the age of the complainants. I have a sneaking suspicion that a table setting out such details might be of greater use to the noble Lord and other noble Lords who have taken a great interest in the matter.

I appreciate that we did not have a debate on this last year because the CPI was where it was and so there was no uprating. One could say that one of the benefits of this being normally uprated in line with inflation, because it is separate from the others and at the discretion of my right honourable friend the Secretary of State, is that we manage to have some debate on this important matter each year, with the exception of last year. That way, these matters can be exercised, rather than subsumed in the general uprating debates that happen—for example, last week. Having made that broad point, let me try to answer a number of the questions that noble Lords have raised.

The first is one on which, again, I will have to offer to write to my noble friend. He asked about the support that the Royal British Legion might be offering to former Navy servicemen, particularly from HM Yacht "Britannia", who have suffered from this, and whether they were going to lose out as a result of payments being made by the Royal British Legion. I will take advice on that and will write to my noble friend.

6.45 pm

One small point that I can make, and the noble Lord, Lord McKenzie, has already referred to, is that children and spouses who might have suffered as a result of contamination from, for example, washing clothes and therefore inhaling asbestos will be covered by the 2008 scheme. Since the noble Lord, Lord McKenzie, mentioned that, I will repeat—and of course we all remember our dates—that 2008 saw an improvement to the scheme by the previous Government, for which I think all those who suffer are very grateful. That is part of what we are debating today.

The first point that the noble Lord, Lord McKenzie, made was about inflation and the small rise of 1%. The noble Lord will just have to accept that, as with other benefits, that is the September-on-September figure. Any future inflation will obviously be covered when my right honourable friend considers this. There is of course a discretion in future years, and a catch-up can take place if it is thought appropriate. However, my right honourable friend considered it right that we should stick to that CPI figure to September 2016, though I am sure he will consider that again in later years.

The noble Lord asked, with regard to both pneumoconiosis and mesothelioma—I apologise to the Committee; I have great problems with those words—just how many claims were successful and what was the percentage of success. He sought in particular an analysis of the levels of claims. Again, this is a matter on which it would be helpful if I wrote to him, in this case setting out details of those missing out and so on. I give the assurance that not only will I write to him but I will make the analysis available in the Library in the usual way for the benefit of other noble Lords who have taken an interest in this issue. I see the noble Baroness, Lady Donaghy, nodding; I know she has taken an interest in these matters in the past, and if necessary I will write to her directly.

Broadly speaking, with regard to the number of claimants, my noble friend Lord Bourne, dealing with these regulations in 2015, talked about them possibly reaching a peak in 2018. I would not want to be quite so specific but we are seeing that the figures will probably level out towards the end of this decade and then, because of the era that we are dealing with—very largely, 1950 to 1980 saw a high use of asbestos, but I appreciate that some other forms of asbestos were not banned until somewhat later—we should begin to see a decline because of the nature and demographic of those concerned and the very long period for which these conditions can lie dormant. So, broadly speaking, we are talking about a levelling out and then a decline but, very sadly, I suspect we will have to continue with this annual debate for a number of years to come.

Lord McKenzie of Luton: If the Minister will allow me to intervene, it is not just a question of looking at the total numbers of people who are new sufferers, particularly in relation to mesothelioma; it is the extent to which they are able to access compensation—as the Minister put it—speedily, whether it is through systems such as ELTO, the payments scheme, or indeed any other scheme. Given the nature of these conditions, we should not be looking at the growing trends, but at whether the mechanisms we have in place are delivering and enabling those people to get access to compensation with tariff payments.

Lord Henley: I want to make sure I get it right and give the right figure. The noble Lord is asking whether we are reaching all those who we think are affected. I think I can give an assurance that 100% of those who are suffering from the five diseases that I set out comply in other respects; in other words, they have not made another claim, or whatever. Those are successful, but if there are some who are unsuccessful, I suspect that will be because they are not eligible. Once suffering from the diseases, there is no need to prove anything further. We are not talking about people being turned away in that respect, but I suspect I will have to write to the noble Lord with further detail.

The noble Lord also asked about the employers' tracing scheme—ELTO—and again I can confirm that it is still doing what it was set out to do and it is, as he put it, having somewhat greater success. As a result, something in the order of half of that £54 million—I have the figures here—comes back. Again, I will write in further detail to the noble Lord on that matter. I apologise to the noble Lord for not really being able to give him greater detail at this stage, but I believe that I can set out the figures—as he put it, in further detail—and I have given assurances that I will do. I hope that that satisfies the noble Lord and others. I beg to move.

Motion agreed.

Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017

Considered in Grand Committee

6.52 pm

Moved by ***Lord Henley***

That the Grand Committee do consider the Pneumoconiosis etc. (Workers' Compensation) (Payment of Claims) (Amendment) Regulations 2017.

Motion agreed.

Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Considered in Grand Committee

6.53 pm

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

That the Grand Committee do consider the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, these regulations which are being introduced under powers in Section 153 of the Equality Act 2010 replace and amend the Equality Act 2010 (Specific Duties) Regulations 2011. Under this power, Ministers can impose specific duties on public authorities to secure the better performance of the public sector equality duty. These regulations replicate the measures from the previous specific duties regulations, namely that public bodies must publish information every year to demonstrate their compliance with the equality duty and set equality objectives every four years.

Tackling the gender pay gap is an absolute priority for this Government. That is why we have used these powers to include new duties for the relevant public authorities, if they have 250 or more employees, to report on their gender pay differences. We have already delivered on our manifesto commitment to introduce mandatory gender pay gap reporting for large employers in the private and voluntary sectors. The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 were approved by both Houses last month and signed by the Secretary of State on 6 February.

Of course, it is only right that public bodies, including government departments, are subject to the same reporting requirements. That is why we announced in October 2015 that we would be extending the manifesto commitment to the public sector. We want government to be a trail-blazer and lead by example. These regulations apply to specified public authorities in England, non-devolved organisations and certain cross-border authorities. Scottish and Welsh public bodies are subject to separate specific duties regulations. The devolved Administrations in Scotland and Wales have been consulted on the proposed changes. Both sets of regulations will require the same gender pay gap calculations and use the same methodology for calculating the data.

Public authorities that are subject to these regulations will need to publish the mean and median differences between the average hourly rate of pay for male and female employees. They will need to publish the mean and median differences between the average bonuses paid to male and female employees. They will also need to report on the proportions of men and women who receive bonuses, and the proportions in each quartile of their pay distribution.

All specified public bodies will need to publish their gender pay gap data on a website that is accessible to members of the public. Organisations will also need to upload data to a government-sponsored website, which will allow us to establish a database of compliant employers and closely monitor compliance. We have aligned the reporting timetables and obligations as closely as possible for employers in different sectors to achieve consistency and comparable sets of data. The two sets of regulations will provide unprecedented transparency on gender pay differences in all sectors and create the environment needed to drive change. I beg to move.

Baroness Gale (Lab): My Lords, first, I thank the Minister for bringing these regulations before us tonight. We waited seven years for the Government to come forward, but I am very pleased that they have finally introduced mandatory pay audits for large companies in the private and voluntary sectors. It is a shame that it has taken this Government so long to bring into force the measures created by the last Labour Government, but at least now we are taking some steps forward, which is very good. I commend the Government for extending the mandatory pay gap reporting duties to public sector employers, as they promised to do in October 2015. This again is another step forward towards progress.

[Baroness Gale]

The regulations discussed today, under Section 153 of the Equality Act, mirror almost exactly the regulations under Section 78, although I have concerns that some of the new duties could have gone further. As with the duties on private and voluntary sector organisations, they apply only to public authorities with 250 employees or more. The maintenance of such a high employee threshold for application of these duties in the public sector was raised as a concern by a significant number of organisations and individuals responding to the Government's consultation, but the Government have chosen not to set a lower threshold for public bodies.

It is understandable that the Government would want to create comparable data between the public sector and private and voluntary sectors but, clearly, limiting the application to public sector bodies with more than 250 employees will severely limit the number of public authorities caught under this regulation. The Government claim that of course a public authority of any size could choose to adopt mandatory reporting, but to what extent will a voluntary expectation create practice in reality? What communication does the Minister intend to have with all public bodies, regardless of their number of employees, to encourage them to publish their gender pay gap information? Have any indicated to her that they will take this voluntary action? In the consultation response, the Government promised to keep under review setting a lower employee threshold, but failed to give an assurance on a timescale. When will this be reviewed? What evidence will she require to persuade her that the figure of 250 employees is too high a threshold?

7 pm

The regulations impose a reporting duty on public authority employers that obliges them to publish information demonstrating compliance with the public sector equality duty and how they will work towards achieving any of the three core objectives of the duty. Despite the requirement to make these objectives specific and measurable, the regulations do not require an employer to publish an action plan or equality objectives aimed specifically at tackling the gender pay gap, as recommended by the Equality and Human Rights Commission. In the consultation response, the commission stated:

"public authorities should be required to publish one or more objectives showing how they will contribute to reducing the gender pay gap, supported by an action plan setting out the steps they will take to achieve their objective(s) and the timescales for taking those steps".

Will the Minister confirm that the Government will ensure that employers will act to tackle the issues raised through mandatory gender pay gap reporting? I am concerned because the information on employer compliance with the public sector equality duty is to be published by 30 March 2018, and then only every four years. I look forward to March 2018, after the first gender pay gap reports under the regulations have been published, but it is not enough just to know that employers have a problem. The Government must do all they can to ensure that the problems are tackled.

The consultation says that the issue will be reviewed. When will that take place? The Government have said that they will publish tables by sector of employers reporting gender pay gaps, published under Section 78 of the Equalities Act. Will they do the same for public authorities, and will the Minister go further and publish an annual league table, ranking public bodies by pay gap? Will the Minister commit today to bring an annual report to Parliament with the raw data responses from the information from public authorities, demonstrating compliance with the public sector equality duty and, of fundamental importance, a government action plan to narrow the gap in the following 12 months?

Progress in tackling the gender pay gap must not be just incremental and piecemeal. Already, progress initiated by the previous Labour Government has been implemented—we think, far too slowly—by subsequent coalition and Tory Governments. We are aware of the deep, corrosive structural barriers at the core of the gender pay gap: occupational segregation, with women stuck in chronically low-paid and undervalued sectors of the economy; unequal caring responsibilities; the undervaluing of roles predominantly done by women; and such matters as maternity discrimination.

I hope that the Minister can say why the Government have rejected almost all of the 17 recommendations made by the cross-party Women and Equalities Committee on tackling the gender pay gap—recommendations which aim at improving working conditions for women of all ages, in all sectors and across the country. It is a shame that the Government are ignoring the evidence of experts as well as the voices and lived experiences of thousands of women in chronically low-paid, undervalued sectors of the economy, such as care, hospitality and retail.

Government research done with the Equality and Human Rights Commission estimated that 54,000 women per year are forced out of their jobs due to maternity discrimination, yet since the introduction of employment tribunal fees fewer than 1% of maternity discrimination cases now end up in a tribunal. On 31 January 2017, the Government published their own review of employment tribunal fees, admitting that:

"The fall in claims has been significantly greater than was estimated when fees were first introduced".

The only way that women have to enforce their rights at work is through employment tribunals, so it is difficult to see how the Government can claim to show commitment to tackling the gender pay gap when they have effectively priced women out of their own employment rights.

I am very pleased that these regulations are before us today, and it is good that we are bringing them in for the public sector. However, I am sure the Minister will agree that far more needs to be done, and at a faster pace than we have seen so far, so that we can close the gender pay gap. I look forward to the Minister's response.

Lord Lester of Herne Hill (LD): My Lords, nothing that I am about to say should be interpreted as anything other than strong support for the regulations, but I think some history is important. In 1970 Barbara Castle introduced an Equal Pay Act that was virtually useless. In 1974 I left the Bar to work for a Labour Government, with Roy Jenkins, to pioneer sex and race discrimination legislation. We were forbidden to do anything about the Equal Pay Act, which in any

case was to be brought in within five years of 1970. So in 1975 a virtually useless Equal Pay Act from a Labour Government was brought into force. What then happened was that it was challenged under EU law by the EU Commission, as a result of which it became necessary in Margaret Thatcher's time to amend the useless Equal Pay Act in order to deal with different work of equal value. I do not think any noble Lords in the Committee are old enough to remember this, but there was a drunken Minister in that Government at the time who introduced the regulations while barely able to speak. When the regulations came in, they were tortuous and virtually unenforceable.

In 2010 we in the Liberal Democrats supported Labour in getting the Equality Act 2010 on to the statute book. Again, we tried to do something about the tortuous and unenforceable equal pay legislation, and the best that we could do—the best that Harriet Harman could do—was something along the lines of these regulations today. The idea was that, at the very least, transparency might be able to assist in tackling the gender pay gap. That was the idea, and of course we support it; it was the idea of the coalition Government, and it is the idea now.

I am sorry to say, as someone married to a vegetarian, that the problem is that there is no beef. The problem is that you can have all the transparency you like but, unless something is done to enforce the law and tackle discriminatory patterns in employment, promotion, recruitment and pay, women will continue to suffer from unequal pay for work of equal value. If Members do not agree with that, they have only to read the admirable gender pay gap information regulations impact assessment from 2017—I think there is no separate impact assessment for these regulations—which explains why mere voluntarism will not work. It explains how they tried to persuade employers of a voluntary approach but it failed and they tried to explain that they hope that these regulations or the other ones that we have already approved will compel action where required.

I promise noble Lords that they will not. How do I know that? I have had four or five decades of experience in trying to tackle patterns of discrimination. We gave the Equality and Human Rights Commission wide powers for strategic enforcement. Those powers were stronger than those given to the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission. However, those powers have not been used. It is all very well for the Equality and Human Rights Commission, as the noble Baroness, Lady Gale, has said, to call for an action plan, but what is actually needed is an action plan by the Equality and Human Rights Commission, which was set up with ample powers that it does not use. I am not saying this behind the back of the commission. David Isaac, its admirable chairman, knows my views and I think he agrees with them.

I remember, as part of the ancient history I am trying to summarise, that there was a wonderful businessman called Oscar Hahn. He was, I think, the head of the Midlands Employers Federation. In those days we were trying to persuade employers and trade unions that there should be legislation to tackle these problems. Oscar Hahn made a wonderful speech in which he said something like: "Archbishop William Temple said: 'Whenever I travel on the Underground, I always intend to buy a ticket but the fact that there is a ticket collector at the end of the line just clinches it'. In the same way legislation and its enforcement just clinches the good intentions of employers and trade unions". I think that is right.

We are dealing today, rightly, with gender equality and with the gender pay gap. The noble Baroness, Lady McGregor-Smith—a Conservative Member of this House—recently produced a devastating review that deals not with gender but ethnicity. She has called it, *The Time For Talking Is Over. Now Is The Time To Act*. Although today we are dealing with gender not ethnicity, I urge Members of this House, and especially the Government, to take very seriously what she says. She says:

> "The time for talking is over".

I agree. She says: "The reward is huge". I agree. She says:

> "Daylight is the best disinfectant".

I agree, provided that there is some enforcement. She says:

> "We need to stop hiding behind the mantle of 'unconscious bias'".

I agree, and that applies to gender and race. She says:

> "The public sector must use its purchasing power to drive change".

Again, I agree. She then explains why she has been trying to persuade people to take voluntary action but has found that it is not good enough. She concludes that legislative measures are necessary. The Government's response to her report, as I understand it, has been to give voluntarism further time in dealing with ethnicity.

I am now 80 years old and I have been campaigning for race equality since 1964. I have to say to the Committee that voluntarism, as the gender pay gap illustrates, will not succeed. Therefore, even if the Government will not act, even if Parliament will not act, I very much hope that the Equality and Human Rights Commission will use its resources for strategic law enforcement so that the regulations we are about to approve will be given bite by the enforcement agency. I hope that what I have just said will not seem controversial.

7.15 pm

Baroness Williams of Trafford: I thank both noble Lords for their thoughtful contributions. I think there is broad support for what we are bringing forward but I shall answer some of the specific questions the noble Lords asked.

The first question from the noble Baroness, Lady Gale, was about why the number of employees was not lower than 250. We estimate that the obligations for authorities with 250 or more employees will affect more than 3.8 million employees in the public sector, and that means they will be covered by the new gender pay gap reporting requirements. Indeed, the combined coverage of these regulations and the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 will be over 15 million employees in 9,000 organisations, representing nearly half the total workforce. In addition,

[Baroness Williams of Trafford]
public bodies with more than 150 employees are already required to report on the diversity of their workforce and are encouraged to publish gender pay gap information.

We are keen in the first instance to place the same requirements of gender pay reporting across all employers to ensure consistency and comparability, so we have started in the public sector with that 250 threshold, which matches the threshold in Section 78 of the Equality Act. However, we will keep the threshold under review, and I think that review period will be reviewed by the Minister for Women and Equalities five years after commencement. Although this is the formal point for reviewing the new obligations, we will be closely monitoring compliance on a more regular basis to ensure that the measures are effective and working properly. With regard to what the response was to the public consultation about the proposed scope, the majority agreed that gender pay gap obligations should apply to authorities with 250 or more employees.

The noble Baroness asked whether the reporting requirements were too narrow. The regulations do not require mandatory equality objectives connected to gender pay gap data or, indeed, action plans. However, all employers will be strongly encouraged to publish information on how they intend to tackle the gender pay gap in their organisations. Many public bodies have actually indicated that they are keen to publish that narrative alongside their gender pay gap calculations, so that they can provide more context for any gender pay differences and highlight work to reduce any gaps.

Transparency may not be a silver bullet, as the noble Lord said, but it will incentivise employers to analyse the drivers behind their gender pay gap and explore the extent to which their own policies and practices may be contributing to it. The regulations that will apply to the public sector will not include an explicit requirement for a senior official to sign a statement or authenticate an organisation's gender pay gap, but this is in line with the existing obligations under the specific duties regulations.

The noble Baroness asked what assessment has been made of the effect of tribunal fees for people with protected characteristics. The review of the employment tribunal fees, published on 31 January this year, confirms that the objectives have been broadly met and that the current scheme is generally working effectively and operating lawfully. However, that does not mean there is no room for improvement. In particular, the fall in claims and the evidence that some people have found fees off-putting have persuaded us that some action is necessary, so we launched a consultation on 31 January regarding the proposal to widen the support available to people under the help with fees scheme. This would help people with low incomes and is expected to particularly benefit women, disabled people and people from black and minority ethnic backgrounds, who figure disproportionately among those in low-income groups.

The noble Baroness also asked: will the Government be publishing league tables to name and shame employers? The public will be able to search the government website to check whether employers in scope have complied with the regulations and compare them with other employers in the same sector. We will consider the most effective way to present the published information in discussion with a wide range of stakeholders but, as I am sure the noble Baroness and the noble Lord know, the press soon get hold of such figures, so we can probably rely on them to highlight the success and failure stories.

Lord Lester of Herne Hill: I hope that we can also rely on the Equality and Human Rights Commission, which is funded for this purpose. I forgot to mention the issue of access to tribunals. It is my view as a lawyer that it is unlawful and an obstruction of justice to do what has been done to the employment tribunal fees, because they deter people with discrimination cases. I bet that if it goes to the European Court of Human Rights it will declare it to be incompatible, so I am glad that the Government are moving on that.

Baroness Williams of Trafford: I thank the noble Lord for that and will come to the EHRC shortly to give a bit more detail.

The noble Baroness also asked why the Government have rejected the recommendation from the Women and Equalities Select Committee to reduce the gender pay gap. We appreciate and recognise the important work that the committee does on this issue, and we carefully considered its recommendations. The report makes a number of recommendations for the Government, several of which have already been actioned. For example, the right to request flexible working already allows those working fewer than full-time hours to request the opportunity to work more. Many of the recommendations made by the Select Committee would involve significant cost to businesses and we are keen not to place too heavy a burden on employers at this time.

We crossed into the equal pay realm. I thought I might make the point at this juncture that pay discrimination and the size of an employer's gender pay gap are two quite different things, but I am sure that the noble Lord knows that, given his background.

The noble Baroness talked about pregnancy and maternity discrimination. That is unlawful as well as unacceptable and has no place in today's society. The Government are working with a range of partners, including the EHRC and ACAS to promote opportunities for women, including pregnant women and new mothers. That will ensure that female talent is recognised and rewarded, and make more employers aware of their legal obligations.

I turn to the EHRC's failure to ensure compliance. The EHRC takes a proportionate approach to enforcement, resolving many matters via pre-enforcement work and using its formal enforcement powers when absolutely necessary. It also takes a strategic approach to enforcement, focusing on those issues where it can have an impact on systemic, persistent and/or pervasive inequalities. Many less strategic cases are resolved through pre-enforcement work, involving discussions with organisations to encourage them to meet their obligations.

The noble Lord, Lord Lester, may draw some comfort from the fact that when the Women and Equalities Select Committee examined the EHRC's chair and

CEO in January, it asked searching questions about why its enforcement and compliance work, potentially involving legal interventions, seemed so limited. The EHRC's chair, David Isaac, who the noble Lord mentioned, agreed that putting more resource into enforcement and compliance is a priority for him. Let us see what progress it makes in the coming year.

Finally, the noble Lord mentioned the Ruby McGregor-Smith review. It is an industry-led review, so we are going into a slightly different realm, but I shall not split hairs about that. The Government believe that non-legislative solutions are the right approach for now, but we will monitor progress and stand ready to act if sufficient progress is not delivered.

I am sure that noble Lords will remember this time last year, when the number of women on boards was a push for the Government and we tried to do it in a non-legislative way. That yielded very good results, so we always try the non-legislative way first before taking action, but we will always take action if we need to.

I hope that noble Lords are satisfied with those responses and thank them for taking part in this debate.

Motion agreed.

Committee adjourned at 7.25 pm.