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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Wednesday 4 March 2020

3 pm

Prayers—read by the Lord Bishop of Salisbury.

NHS: Doctor Retention

Question

3.07 pm

Asked by ***Lord Naseby***

To ask Her Majesty's Government what steps they are taking to improve doctor retention in the National Health Service upon qualification.

Lord Naseby (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper, and in doing so declare the interest that my wife is a retired full-time senior partner in general practice.

Lord Bethell (Con): My Lords, this Government are committed to growing the workforce by 6,000 more doctors in general practice as part of their manifesto commitment. Doctor retention is a huge part of this commitment, which is why we are making changes to support general practitioners, including the GP retention scheme, a two-year primary care fellowship programme, the new partnership programme and the locum support scheme.

Lord Naseby: I thank the Minister for that Answer, but are there not two particular issues? The first is medical school intake. According to the latest figures, for 2018-19, nearly 9,000 more female medical students were taken on than male ones. As the House will be aware, 75% of the female intake work only part-time. Secondly, is there not also the question of the return to service agreements? This is something that we in this country use for medical Army, Navy and Air Force personnel. Is it not time to look at what Singapore, Canada and Australia have done? If it works in those areas, should we not look at it for the NHS?

Lord Bethell: My noble friend makes a good and fair point on return to service agreements. Service time for doctors was tested in 2017; the results were mixed and had a negative impact on the number of applications. However, on his point on female attendance for education, I do not recognise his numbers and I completely reject the idea that there might be too many women working in the NHS.

Lord Winston (Lab): My Lords, I regret to say that one of the key issues is not being addressed by the Government. Increasingly, inevitably, medicine is becoming a very academic subject; academics at the highest level are now going into medicine. There is a major problem with those academics being attracted to research in the NHS. So many doctors are now looking for alternatives because they cannot do research within the NHS. That is a loss to the NHS and, I am afraid, a loss to medicine. We must do something about research in parallel with clinical treatment.

Lord Bethell: The noble Lord makes a very important point on the importance of medical research to the NHS's achievements. For this Government, though, the focus of recruitment is on primary and front-line care. Our investment in research remains undiminished, but the new retention commitment is very much about delivering value and clinical delivery for patients.

Baroness Finlay of Llandaff (CB): My Lords, I thank the Minister for his support for women in medicine—being one, I should declare that interest. Will he look actively, with NHS trusts and the GMC, at trying to dissuade people from retiring early and making it easier for them to come back part-time without having to jump through multiple hoops, so that we do not lose many years of wisdom from the NHS for those who no longer want to work full-time in their main specialty but have a great deal to contribute in teaching, research and clinical practice?

Lord Bethell: The noble Baroness makes a very important point. It is clear that the lifestyles of clinical professionals in the NHS are changing. Many choose to take time off after their studies before joining practice and many seek to return after taking time out from professional front-line work. It is 100% the responsibility of—and in the interests of—the NHS to make that journey as quick and easy as possible.

Baroness Brinton (LD): My Lords, last year the Health Foundation reported that there had been no progress towards the Government's target of 5,000 extra GPs by this year, mainly because of issues of pay, lack of investment in learning and development, and the stress of the job. Can the Minister update us on whether that target will be met this year?

Lord Bethell: The noble Baroness's figures are not exactly the same as the ones I have. Last year, 3,250 students were studying to be doctors; this year there are 3,500, and next year there should be 4,000. Those are the numbers provided to me. If there is any difference between the two, I would be glad to discuss them with her elsewhere.

Lord Lansley (Con): My Lords, does my noble friend agree that the well-being of doctors is a critical factor in this? He will recall that Professor Michael West and Dame Denise Coia produced a report commissioned by the General Medical Council at the end of last year. Will the Government and the NHS work together with the GMC to try to implement their recommendations?

Lord Bethell: The culture of the NHS and the well-being of those who work in it are of paramount importance. Getting that right is the focus of the NHS people plan. Working with the GMC on all these arrangements is a priority for the Government and I would be glad to follow up my noble friend's suggestion.

Baroness Thornton (Lab): My Lords, I thank the noble Lord for organising the meeting that we have all just come from; everybody there very much appreciated it. I am sure he agrees that seeing so many doctors leave the NHS in the early stages of their careers is

[Baroness Thornton]
very worrying. Indeed, it will worsen the recruitment crisis that we are seeing. What steps are the Government taking to understand the driving forces of and the motivating factors for the exodus from the UK's medical training programmes? Have the Government committed to collecting that information from doctors who have left? Understanding that must support strategies for getting them back in again.

Lord Bethell: The noble Baroness makes an important and fair point. Understanding why people depart is very important. Departure rates are too high for us to hit our objectives and raising retention rates is important. However, I emphasise that the leaver rate has not increased as she implies. In 2014 the rate was 14% and in 2018 it was 15%. That is not a huge increase but it is too high and we are finding ways to address it.

Baroness Meacher (CB): My Lords, in his initial response to the Question, the Minister referred to initiatives to increase the number of GPs. Does he have an estimate of how many GPs will be created through these initiatives, and by which year does he anticipate that the additional 6,000 might be achieved?

Lord Bethell: The initiatives that I described—the two-year primary care fellowship programme, the new-to-partnership payment and the locum support—are retention rather than recruitment initiatives, but an important part of our recruitment proposition is that those seeking a career in medicine think of it as a rewarding and fulfilling long-term career. As for the numbers we are seeking, we are already hitting the targets for graduate positions, and we have been encouraged by the response.

Agriculture: Genome-edited Crops

Question

3.15 pm

Asked by ***Viscount Ridley***

To ask Her Majesty's Government what plans they have to regulate genome-edited crops after December 2020.

Viscount Ridley (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and in doing so declare my farming interests.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I declare my farming interests as set out in the register. The UK Government will take a science-based approach to reconsidering the position that all genome-edited organisms must be regulated as genetically modified organisms—GMOs. Our view is that genome-edited organisms should not be subject to GM regulation if the DNA changes could have occurred naturally or through traditional breeding methods. However, we have strict controls to safeguard health and the environment. Products must pass a robust case-by-case safety assessment, taking full account of scientific evidence.

Viscount Ridley: My Lords, there is not even a theoretical possibility that a genome-edited plant is less safe than a conventionally bred variety with the same trait. Environmental and nutritional benefits are accruing to consumers and producers all around the world from this technology, reducing dependence on chemicals —a race to the top, not the bottom. Given also the strength of British laboratories in this area, but their inability to develop these products because of strict regulation, does the Minister agree that it is vital to send a signal now to the private sector, perhaps by issuing draft regulations, that the UK is prepared to see rapid and timely approval of crops for commercialisation in this area, in sharp contrast to the impossible regime imposed by the European Union and as promised by the Prime Minister in Downing Street?

Lord Gardiner of Kimble: My Lords, we did not agree with the 2018 European Court of Justice ruling that all GE crops must be regulated as GMOs. There is an advantage in terms of seeking to improve the environment and productivity, and helping the agricultural sector, by exploring further how to better regulate genome-edited organisms. There is a lot of opportunity here. As I emphasised in my Answer, safety and the environment are of primary concern, but there is great scope here.

Baroness Jones of Whitchurch (Lab): My Lords, I do not have any farming interests, but I declare my interest in Rothamsted agricultural research, which is in the register.

There is no doubt that genome editing can make an important contribution to reducing pest-resistant and drought-resistant crops, but does the Minister agree that consumers will be properly reassured by the science only if it is published openly and shared for the common good so that everybody can see the background to that science?

Lord Gardiner of Kimble: I absolutely agree with what the noble Baroness has said. That is precisely what we need to do when considering any changes. The most important thing is consumer confidence. We are absolutely clear that there is merit in certain genome-editing activity. The noble Baroness mentioned the Rothamsted Research institute. There is also the Earlham Institute, the James Hutton Institute, the Sainsbury Laboratory and the John Innes Centre. All of our great laboratories are very positive about this research, and we do think that we should reconsider the current regulations.

Baroness Bennett of Manor Castle (GP): My Lords, I commend the Minister on the Government's focus on agroecology as the way forward for agriculture and on the inclusion of soil health in the Agriculture Bill. Does the Minister acknowledge that the 21st-century approach of working with nature, with a whole-farm approach, is the direct opposite of the simplistic 20th-century GM editing approach? Should not our research efforts be focused on agroecology and working with nature?

Lord Gardiner of Kimble: Obviously, much of what we want to do is to work with the rhythm of nature. The point I was seeking to make earlier about gene

editing is that, in particular where it merely escalates a natural process, there is an advantage to it. In terms of enhancement of the environment, we want to get disease-resistant crops and to improve animal welfare. A lot of the research is in order to assist things that the noble Baroness would support.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, how will the Government regulate and monitor cross-contamination of so-edited crops, which will not be grown universally in the agriculture industry, to make sure they do not affect biodiversity and overrun existing species?

Lord Gardiner of Kimble: This is why we rely on the best science and have a science-based approach to how these matters are regulated. Clearly, confidence that this is about enhancing and helping the environment is the pitch by which we think that certain gene-editing activity and research could be extremely beneficial. It is eminently compatible with helping agriculture and the environment.

Lord Lilley (Con): My Lords, I also declare an interest in Rothamsted, which I represented in Parliament for 34 years. Would it not be a wonderful thing if, instead of farmers having to treat potato crops with pesticides up to 15 times a year, we were able to develop disease-resistant crops? Should not all those who care for the environment be in favour of this, rather than taking a Luddite approach?

Lord Gardiner of Kimble: My Lords, we have somehow got to help feed the world, and that is why I think research work into disease resistance in wheat, rice and cucumber, improving the starch content and quality of potatoes, increasing grain weight and improving protein content in wheat are areas in which a contribution can be made by responsible scientific endeavour.

Lord Patel (CB): My Lords, a recent report by the Nuffield Council on Bioethics said,

"Genome editing to improve farmed animal welfare. What's not to like?"

Does the Minister have a comment on that?

Lord Gardiner of Kimble: My Lords, scientists have produced, for instance, pigs that can resist one of the world's most costly animal diseases—porcine reproductive and respiratory syndrome virus—by changing their genetic code by genome editing. This disease clearly affects animal welfare and costs the pig industry £1.75 billion a year in Europe and the United States.

Historic Sexual Offences: Investigations

Question

3.22 pm

Asked by ***Lord Campbell-Savours***

To ask Her Majesty's Government what assessment they have made of the management of investigations into historic sexual offences.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, allegations of sexual offences are serious matters and must be treated as such, regardless of when they are alleged to have occurred. Increasing numbers of people now have the confidence to come forward and report what happened to them. It is right that the police are investigating these allegations and encouraging that they are securing convictions and providing victims and survivors with the justice that they deserve.

Lord Campbell-Savours (Lab): My Lords, as the Carl Beech affair now draws to a close, is not the real scandal in its management the fact that decent, honourable people, who have and had given a lifetime of public service to their country, have had their reputations destroyed by the headline-grabbing accusations of ambitious self-publicists and irresponsible policemen, who believed and promoted the lies of a fantasist, and that the damage that these purveyors of untruth have done can never be mitigated? Surely the perpetrators of this huge injustice bear responsibility for what has subsequently happened and it rests on their conscience, and history will never forgive them.

Baroness Williams of Trafford: I agree with much of what the noble Lord says. Once someone is falsely accused, that can never be undone and it can blight their entire life from that moment forward. Of course, some of the people whom I am sure the noble Lord is referring to are dead and cannot defend themselves. There is some remedy in law—perverting the course of justice or perjury in court—but he is absolutely right that those allegations can never be reversed and can destroy lives for ever.

Lord Cormack (Con): Did my noble friend read the moving words of Diana Brittan, the widow of our former colleague Leon Brittan, and does she not agree that one who has abused his place in one House of Parliament should not be admitted to another?

Baroness Williams of Trafford: I read the words of Diana Brittan. I hope that the whole House will take comfort from the fact that, when the House of Lords Appointments Commission decides whether people will come into your Lordships' House, it should consider whether that person will bring the House into disrepute.

Lord Paddick (LD): My Lords, does the Minister not agree that complainants should always initially be cared for as genuine survivors of sexual offences but investigations should always be an objective search for the truth, and that there is no contradiction in such an approach?

Baroness Williams of Trafford: I think that the noble Lord knows that I agree with him.

Lord Grade of Yarmouth (Con): My Lords, in view of the life-changing and career-ruining result of some of these accusations, is it not time that people were not named until charged? I wonder what the Government's attitude is to that. It would be a great remedy in future to protect public figures from ruination by glib accusations.

Baroness Williams of Trafford: My noble friend will know that the guidance on this states that the police will not name those arrested or suspected of a crime save in exceptional circumstances where there is a legitimate policing purpose to do so, such as a threat to life, the prevention or detection of crime, or when police have made a public warning about a wanted individual. However, my noble friend will also appreciate that, in the case of Jimmy Savile, for example, had people not come forward, those victims' voices would never have been heard.

Lord Hunt of Kings Heath (Lab): My Lords, does the noble Baroness consider that police forces have any insight into the impact of their behaviour? I have in mind particularly Wiltshire Police in the case of Ted Heath. So far, one has faced a stone wall and hardly received a decent apology for the way in which they pursued a ridiculous case.

Baroness Williams of Trafford: My Lords, in this House we have talked about several cases such as the one that the noble Lord has referred to. It is right that lessons are learned from these things and that the IOPC steps in, and it is also right that these matters can be pursued through the courts.

The Lord Bishop of Salisbury: My Lords, can the Minister explain how we will learn from the sorts of examples that we have had—for instance, the case of Sir Edward Heath in Salisbury—unless there is an independent review? In the past, we have been told that the Home Office cannot do that and that it is the responsibility of the police and crime commissioner. The police and crime commissioner for Wiltshire says that the police force there was acting as a lead authority on behalf of others. We need to accept that more than 40 allegations had to be investigated. How will we learn unless there is a review, and what can the Home Office do that will help to restore the reputation of both Sir Edward and, I have to say, Wiltshire Police?

Baroness Williams of Trafford: I certainly take on board that last point about restoring the reputation of Wiltshire Police. I guess that it is for that force to ensure that the cultures change over time. Three successive Home Secretaries have now said that they will not instigate an inquiry and that it is a matter for the police. The IOPC has already had an inquiry into Operation Midland. HMICFRS is now carrying out a lessons-learned review into Operation Midland, and that report is due in the next few weeks.

Lord Kennedy of Southwark (Lab Co-op): My Lords, the noble Baroness has just said that there have been three Home Secretaries who have not made an investigation into Operation Conifer, but, as the right reverend Prelate said, we are not going to move forward here. Why will a Home Secretary not order an investigation?

Baroness Williams of Trafford: My Lords, for the simple reason that the police are operationally independent of the Government; it is a matter for them. There are funds available should they wish to launch inquiries, but it has been the clear view of three successive Home Secretaries that an inquiry is not appropriate.

Security, Defence, Development and Foreign Policy: Integrated Review

Question

3.30pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government what is the timescale for the Integrated Review of Security, Defence, Development and Foreign Policy; who will lead that review; and whether the members of the Chiefs of Staff Committee will be part of the team delivering the review.

The Minister of State, Ministry of Defence (Baroness Goldie) (Con): My Lords, the integrated review will align with the comprehensive spending review reporting later this year. Implementation of its recommendations is expected to be a multi-year project. Further announcements and timings will be made in due course. The review will be led by the Prime Minister. It will involve numerous stakeholders, including the Chief of the Defence Staff and service chiefs.

Lord West of Spithead (Lab): My Lords, I thank the Minister for her Answer. I am amazed that this highly complex review, which ought to be called the Johnson review, is going to have to provide answers about money, effectively, for this summer. It is also sad that its aim is not something as straightforward as ensuring the defence and security of our nation and people, rather three pages of waffle.

My Question relates to spad involvement. When I was a Minister for three years, I am afraid I came to the conclusion that most spads—not all—were a complete waste of rations. Very recently, a spad has actually said that this country does not need an agriculture and fisheries sector, which, in strategic terms, is totally bonkers. Can the Minister reassure me that this study will be done by people who actually understand geopolitical and geostrategic issues, rather than by weird—I use the word advisedly, as it has been used by other people—spads?

Baroness Goldie: My Lords, let me try to tease out a few questions from the rhetoric. First, we have to be realistic: circumstances for the United Kingdom have changed dramatically, not least because we have left the EU, but particularly since the last strategic defence and security review in 2015. What we are contending with globally is unrecognisable from what we knew then. If this review was called the Johnson review, it would be a very appropriate title because it is an absolutely essential response to a geopolitical situation that is fluid globally. It is an essential response to the need to knit together government policy for defence, for the Foreign and Commonwealth Office and, of course, for DfID. That is a very far-reaching prospect.

I do not share the noble Lord's pessimism about the timescale for this review. He will be aware that, in fact, as far as defence is concerned, a lot of the preparatory work has been done: it is there and ready to be pulled down and presented by way of evidence to the review.

On the matter of spads, it is a little unfair to refer to people who are unable to be here to defend themselves. My experience of spads is limited but essentially

positive—they can be an enormous help in the discharge of ministerial responsibility. It is very easy to get cheap headlines by knocking somebody because of the way they dress—no doubt, I could be knocked because of the way I dress—but I think what matters is the cerebral capacity that can be brought to the role, and I am absolutely satisfied about that.

Lord Ricketts (CB): My Lords, may I declare an experience, as the co-ordinator of the 2010 strategic defence and security review? Does the Minister agree that good strategy is about choosing and prioritising? Does she accept that one of the most crucial aspects of this review is that it should start with a clear statement of the Government's vision for Britain's role in the world—a realistic role that gets beyond the slogan of "global Britain"?

Baroness Goldie: I am grateful to the noble Lord; he gets to the nub of the issue. The review will indeed develop global Britain's foreign policy. It will focus on our alliances and diplomacy, look at the trends and shifts in power and wealth to which I referred, and then determine how best we can use our international development resource.

Baroness Smith of Newnham (LD): My Lords, I share the concerns of the noble Lords, Lord West of Spithead and Lord Ricketts; we need to be realistic about what the United Kingdom is trying to achieve. Apparently, this review of policy is supposed to be the most fundamental since the end of the Cold War. That sounds fine, but can we be reassured that, if it takes place alongside the comprehensive spending review, it will not be an excuse for the newly integrated No. 10 and Treasury spads to find ways of ensuring that the cloth is cut according to what the Treasury thinks? Will we have the resources that our place in the world and our defence needs require?

Baroness Goldie: The noble Baroness asks a serious question. In an endeavour to reassure her, let me say that the review is a serious, substantive proposition. As I have indicated, it examines areas of policy, defence strategy, alliances, international partnerships and so forth. The review is deliberately wide-ranging, as it has to be, but it will be underpinned by our existing commitments to contributing 2% of our GDP to NATO and 0.7% of GNI to development and, of course, to maintaining our nuclear deterrent, which will be a core part of the review.

Lord Tunnicliffe (Lab): My Lords, there is a general consensus that the 1997-98 strategic defence review was serious and thorough. It involved 14 months of consultation and included a panel of 18 external experts, submissions from 450 MoD civilian and service personnel, seminars with defence and foreign affairs specialists, written public submissions, and base visits so that 7,500 staff could express their views. If this is the biggest review of our foreign, defence, security and development policy since the end of the Cold War, as the Government keep repeating, can the Minister unambiguously confirm that the consultation will be at least equal to the 1997-98 process?

Baroness Goldie: In no way do I diminish the significance of the review to which the noble Lord refers; it was important and necessary. The world in which we live now, both domestically and globally, is very changed. As I said to the noble Lord, Lord West, a lot of the work that will be necessary to produce evidence for the review regarding the defence perspective in the UK has already been done. The noble Lord, Lord Tunnicliffe, will be aware that over the years, we have had the 2015 SDSR, the Contest strategy on counterterrorism, the national security capability review, the modernising defence programme, and the exciting and very effective transformation programme. A lot of that work is already in place, and a lot of evidence is available for the review.

Economic Affairs Committee

Liaison Committee

Constitution Committee

Communications and Digital Committee

Membership Motions

3.37 pm

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

Economic Affairs Committee

That Lord Monks be appointed a member of the Committee, in place of Lord Darling of Roulanish.

Liaison Committee

That Lord Davies of Oldham be appointed a member of the Committee.

Constitution Committee

That Lord Sherbourne of Didsbury be appointed a member of the Committee, in place of Lord True.

Communications and Digital Committee

That Baroness Buscombe be appointed a member of the Committee, in place of Baroness Scott of Bybrook.

Motions agreed.

Birmingham Commonwealth Games Bill [HL]

Third Reading

3.38 pm

Relevant document: 5th Report from the Delegated Powers Committee

A privilege amendment was made.

Lord Griffiths of Burry Port (Lab): My Lords, we are coming to the end of a marathon—and for those of us who were here the first time the Bill went through, a double marathon. All the issues were thoroughly debated once and then thoroughly debated again. It is marvellous to think that now, at last, we are gift-wrapping this and sending it to the other end of the corridor for the other place to look at.

[Lord Griffiths of Burry Port]

I believe that we have tidied up the Bill: the key points have been clearly made and the unresolved matters identified. We have spoken of accessibility, sustainability and legacy; financial sticking points have been identified; workers' rights have been adumbrated; regular reports have been required; and the bifurcatory principle, with India now coming into the scheme, has been established, perhaps modelling good practice for the future. Inclusivity has been a repeated word, and the inner secrets of Birmingham New Street station have been revealed once and for all. Those matters must now be taken further in the other House, and we look forward to that.

I understand that we are not allowed to say thanks—so I will, but not to Uncle Tom Cobbleigh and all. I just want to say what a privilege it has been to be involved in a Bill that has been formulated by the whole House consensually across the Chamber. I look forward to many more such occasions in future—and I hope that tomorrow, in the debate on the BBC, we shall do exactly the same thing. I also want to say one word of courtesy to the Minister, who cut her teeth on the Bill. I am certain that we are going to dance together into the future.

Lord Addington (LD): My Lords, I thank the Minister and her predecessor, who have gone through the rather odd process of having to do most of the work on the Bill twice. We have tried to engage to ensure that people know how this will work, and give them an idea of what to expect from it. The Government, the whole House and the political structure have done a good thing in dealing with something that might not have happened unless Birmingham had taken it on. Durban could not do it, so Birmingham has taken it on, which means that the Commonwealth Games will go ahead. The Commonwealth is an institution that may well become more important in our lives, and it will have its big sporting festival. Sporting festivals are good things; thus endeth the lesson. We have brought something through, and the House has tried to achieve a degree of agreement and consensus on a common aim. I do not know whether we shall manage to go down that path very often, but when we can we should celebrate it, and I thank the Minister and my noble friend Lord Foster, who managed to make sure that we were still represented when I could not be here. I thank them both for their help; I enjoyed working through most of this process.

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Baroness Barran) (Con): As we are not allowed to say thank you, it would be remiss of me not to break the rules, along with the noble Lords opposite. I echo the thanks of the noble Lords, Lord Griffiths and Lord Addington, for being so constructive and helpful on the Bill, and I acknowledge the extraordinary expertise of the noble Lords who contributed to our proceedings. I learnt an enormous amount about many things that I never even knew existed, including, obviously, the signage at Birmingham New Street station.

3.43 pm

Bill passed and sent to the Commons.

Fisheries Bill [HL]

Committee (2nd Day)

3.44 pm

Relevant document: 6th Report from the Delegated Powers Committee

Clause 1: Fisheries objectives

Amendment 24

Moved by ***Baroness Jones of Whitchurch***

24: Clause 1, page 2, line 35, at end insert—

"( ) In addition to the fisheries objectives, section (Duty to sustain the UK fishing industry workforce) outlines responsibilities towards the UK fishing industry workforce."

Member's explanatory statement

This amendment makes clear that the Secretary of State has additional duties to the UK fishing industry workforce which extend beyond the general environmental and sustainability principles provided for in Clause 1.

Baroness Jones of Whitchurch (Lab): My Lords, Amendments 24 and 29, in my name, make it clear that the Secretary of State should have a wider regard to the national interest through exercising responsibilities to the UK fishing industry workforce, particularly its safety and training. They would require the Secretary of State to consult and produce a report within six months of the Bill being passed. The consultation should be a collaborative exercise involving cross-government engagement, the industry and a range of stakeholder groups.

The amendments are tabled with the support of the National Federation of Fishermen's Organisations, and they are underpinned by continued concerns about the number of accidents and deaths at sea. Fishing is a dangerous industry and, unlike most other jobs, going to sea is incredibly physically demanding and requires extended periods away from home. It remains one of the most dangerous occupations in the world and every year there are deaths in UK waters, many of which are avoidable. The Sea Fish Industry Authority has identified 535 serious injuries to fishermen in the last 10 years, so we can and must do better.

It would be a start if there were a co-ordinated approach to training new entrants to help future generations to begin their careers in a safe and sustainable manner. The introduction of remote electronic monitoring equipment on boats, which is covered by other amendments, would also help maintain safety standards. It is also vital that we set the same high safety standards on foreign vessels as we expect of our domestic fleet, and the licensing arrangements should help facilitate that.

So, although our domestic safety standards are high, the amendments would require the Government to show how they intend to build upon them once we are outside the common frameworks and responsible for our own safety policy development. The amendments would also require the Government to highlight how they intend to assist the industry in identifying, training and retaining new talent to ensure a vibrant industry in the years to come.

Finally, we need an immigration system that allows UK vessels to continue to recruit skilled non-UK nationals to help plug the short-term skills gaps. All these measures need to come together in an overarching plan to build and sustain the fisheries' future, grow the industry and revive coastal communities. This is vital if we are to realise the objectives in Clause 1. I beg to move.

Baroness Ritchie of Downpatrick (Non-Afl): My Lords, I support both amendments in the name of the noble Baroness, Lady Jones of Whitchurch; I have added my name to Amendment 29. As the noble Baroness said, the purpose of both her amendments is to introduce requirements on the Secretary of State to build and sustain the UK fishing industry. They would also require the publication of a strategy for enhancing the safety of fishers and providing the necessary legal and training infrastructure. The amendments are supported by fish producer organisations throughout the UK.

For many coastal communities, the fishing industry, both onshore and offshore, is critical to their growth, development, job creation potential and local economy. In that respect, I remind noble Lords of the County Down fishing ports, about which I have already spoken to the Minister, where the fishing villages survive and thrive due to the prevalence of the fishing fleet and the fish-processing industries.

Allied with that, though, is a high level of risk and danger. Deaths of fishermen have occurred in the Irish Sea over the last 20 years. I think of one particular family from Kilkeel where a grandfather, a son and his son all perished on one night about 20 years ago. The fishing industry believes that there is a once-in-a-generation opportunity not only to revive those coastal communities and grow the region's industry role as leaders in sustainable fisheries management but to ensure that this worthy profession is provided with adequate and up-to-date training; that incentives are provided to those who wish to engage in fishing as a profession; and that they are provided with the necessary qualifications in a safe environment to do so.

Take the example of the County Down fishing ports, where about 1,700 people are employed in fishing. I suppose on a proportionate basis, taken throughout the UK, that is not considered a lot. However, in those communities, it is, because fishing is vital to their revitalisation.

The Bill is about setting the future legal framework for fisheries management, but it is also right that Government, Parliament and industry consider how to grow and sustain the workforce needed if new opportunities are to be realised.

The three central themes of these amendments are to protect and enhance the safety of workers across the industry; to develop that modern legal and training infrastructure that helps to grow our domestic workforce; and to shape an immigration system that allows UK vessels to continue to recruit skilled non-UK nationals. I am mindful of the Minister's written response on this issue to all of us who participated at Second Reading some three weeks ago, in which he said:

"We will prioritise the skills a person has to offer, not their nationality."

I note that, through the prospective immigration Bill, Defra is working closely with the Home Office to ensure that there is a long-term strategy for the food, farming and fisheries workforce as part of the immigration policy. I hope that the Government will be able to accommodate skilled non-EEA fishers to contribute to the revitalisation of those coastal communities, as well as protecting and enhancing the legal and training infrastructure of all domestic workforces.

I believe that if our fishing industry is to recover and become the catalyst for economic regeneration in our coastal communities again, there is a duty on all of us, and on the Government, to work in a collaborative way with the industry and other relevant organisations to achieve that objective, which should be placed in legislation. That is why I support both amendments.

Lord Cormack (Con): I have not participated in these debates, but I wanted to support this amendment because of the emphasis on safety. I do so, my Lords, for personal reasons. I was born in Grimsby just before the Second World War. Grimsby was in those days the largest fishing port in the world. The title was sometimes disputed by our friendly rival and neighbour across the Humber in Hull. Certainly, those two great fishing ports occupied the first and the second positions.

My family had generations in the fishing industry, coming down first from Eyemouth in the Borders of Scotland with smacks when the fishing industry was established around the middle of the 19th century. I was brought up to have great respect for those who went down to the sea in ships. That respect was reinforced by great sadness almost every year, because there was hardly a year when a trawler was not lost, often with the deaths of 20 or 30 men. This brought great grief, either to Grimsby or Hull.

As a young man growing up, I knew all this theoretically. But then, in 1965, I was chosen as the Conservative candidate for Grimsby for the election that in fact took place in 1966. For some 18 or 19 days in August 1965, I went on a deep-sea trawler and lived with the fishermen on board, and got up when the cod end was swung in and the catch was teemed on the deck. Although it was August, we faced at least one force 8 gale; we were also becalmed for a time. I saw the extraordinary skill, courage and resilience of the fishermen. You can understand it only if you have seen it at first hand. They were a wonderful bunch of men, marvellous comrades. The cook was not the most brilliant, but he had been a fisherman until forced to retire in his late 60s and then he became a cook. There was a wonderful spirit of camaraderie and there was great skill, but there was always great danger.

I became very sad when, following our joining what was then the Common Market, the fishing industry was certainly hit—I speak as one who was, as many of your Lordships know, a fervent remainer. If we are to revive our fishing industry, as I hope we will, it is tremendously important that we place emphasis on training and appreciating those who are trained. They have to be immensely strong, resilient and courageous, working at all hours of day and night and rarely getting more than a handful of hours of sleep. A revived fishing industry will depend wholly on those people.

[Lord Cormack]
It is therefore right that we concentrate for a few moments on this issue and I feel it appropriate to give my words of support in this context.

Viscount Hanworth (Lab): My Lords, I concur with the sentiments of the previous speaker. However, I fear that the amendments are misconceived in calling for the building of a fishing industry workforce. Even if one were to argue in favour of a substantial increase in the size of the UK catch, which would be utterly wrong in the current circumstances of depleted fish stocks, it would not require an increased workforce.

There is already significant underemployment in the fishing workforce, since advances in fishing technology have reduced labour requirements. We should therefore seek alternative employment for our fishermen, unless we seek to ban the technology. This is the technology of the big boats that use sonar to locate the fish, chart their positions by GPS and use encrypted messages conveyed by satellites to alert other vessels in their fleets to their discovery of the prize. They also take most of the fish.

Were fish stocks to be replenished, less effort would need to be devoted to fishing and fewer fishermen would need to be employed. There would no longer be a need to search the vast expanses of the marine deserts in pursuit of the few remaining shoals of fish.

Perhaps I might also remark on the idea that the fish stocks in our so-called exclusive economic zone are a resource that belongs exclusively to our nation, as more than one speaker has maintained. Our EEZ, which is of an exorbitant extent in comparison with those of other European fishing nations, was bequeathed to us by the United Nations Convention on the Law of the Sea. It was the by-product of an intention to protect the fish stocks of Iceland, which were suffering from the depredations of foreign fishing fleets. It was never the intention of the convention to disbar other European nations from their traditional fishing grounds, yet this is what our fishermen are keen to achieve, seemingly with the support of the Government.

It is a recipe for trouble and conflict, notwithstanding the joy that it has given to my noble friend Lord Grocott, who is exhilarated at the prospect of claiming these fish stocks for the nation. It is foolish. While we were debating the Fisheries Bill on Monday, the International Trade Secretary, Liz Truss, and the French Minister for European Affairs, Amélie de Montchalin, were rehearsing the terms of a major confrontation on fishing rights.

4 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I rise briefly to support Amendment 24 in the name of the noble Baroness, Lady Jones of Whitchurch, and Amendment 29 in her name and that of the noble Baroness, Lady Ritchie of Downpatrick.

As many have indicated previously, fishing is a dangerous occupation, one where injuries and death occur on an alarmingly regular basis, as the noble Lord, Lord Cormack, so elegantly told us. For every fisherman and woman employed on a vessel involved in fishing, 10 are employed in landing and processing fish. All those employed in the fishing industry as a whole should be protected and enjoy similar employment rights to those who work in other sectors. The Government should take steps to ensure that those engaged in the fishing industry, whether offshore or onshore, should be protected as far as is possible, and the Government should produce a strategy to ensure this happens. Each person engaged in the industry should be aware that the Government have such a strategy and that their welfare is key to the industry's success.

Training, as the noble Baronesses, Lady Jones and Lady Ritchie, have said, is—as it is in everything—key to ensuring safety is carried out and observed. This must be a legal requirement and entitlement for all in the UK fishing industry workforce. It should not be left to the discretion of the vessel or processing plant owners. I fully support these amendments and the need to work for a strategy to sustain the UK fishing industry workforce to be in the Bill.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am grateful to the noble Baroness for her proposed Amendments 24 and 29, which would introduce additional duties in the form of safety requirements for fishing activities and training requirements for the UK fishing industry workforce.

In this short debate, we are absolutely at one that these are extremely important matters, and I would like to put on record, as I did at Second Reading, my recognition and regard for those who go to sea to catch fish for our consumption; I pay tribute to them. The noble Baroness, Lady Ritchie of Downpatrick, referred to a family who were very brave and courageous in sustaining the losses that they did. My noble friend Lord Cormack reminded me of those communities, such as coal mining communities and agricultural communities, doing dangerous tasks over the years for our benefit. I therefore identify with all of what has been said. It is important that we support fishers with increased health and safety provisions as well as further training to increase the awareness of dangers and the understanding of how to respond to them.

That is why I say specifically to the noble Baroness, Lady Jones of Whitchurch, that Defra is working closely with other UK departments and agencies to ensure that fishing becomes an increasingly safe and—although I think it is appealing in many ways—"appealing" form of employment, as my notes say. I was very struck by the point that my noble friend Lord Cormack made about camaraderie. That cook probably continued to go to sea, though no longer fishing, because he did not know how to live outside of that community. I am very struck by that sense of community —which is why the noble Lord, Lord Grocott, spoke in the way that he did on an earlier day in Committee—because these communities feel very strongly about these matters. This work is under way and will consider regulations and other work, which is also under way as I said.

Safety at sea is not just a specific fishing activity issue; it is a vessel issue. The safety of all vessels falls within the remit of the Maritime and Coastguard Agency. Provisions for the safety of vessels are included in the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997. In addition, the Merchant Shipping Act 1995 provides the MCA with powers to implement all the safety legislation.

The Government are, importantly, also taking action through our apprenticeship programme and the *Post-16 Skills Plan* to reform technical education and a new careers strategy for the UK fishing industry workforce. The Sea Fish Industry Authority—known as Seafish—leads the development and delivery of training for workers in all sectors of the seafood supply chain. Seafish has applied levy funds to develop training programmes and learning materials aimed at the seafood processing sector to enhance the skills and quality of operations and final products. In addition, the Seafood Industry Leadership Group, established by Seafish to deliver *Seafood 2040: A Strategic Framework for England*, will deliver a single cross-sector seafood training and skills plan, aiming to support businesses in the seafood supply chain to recruit workers with suitable skills.

England's new domestic grant scheme, the Maritime and Fisheries Fund—the MFF—can support training projects for fishers. Under the European Maritime and Fisheries Fund—the EMFF—around £3.5 million was spent on improving skills and training up to 31 December 2019. The Bill provides the power, in Clause 33, to introduce grant schemes through regulations for health, safety and training.

The noble Baroness, Lady Ritchie of Downpatrick, referred to my letter. I should also add that Defra is considering the latest data and working closely with industry to understand and explore the labour demand and supply requirements for both the permanent and seasonal workforces, which are of course very important.

I wanted to explain the current situation to the noble Baroness, so that this is not in a void. I absolutely understand the points that have been made. All these responsibilities are in existence. I hope that this explanation of the regulations, the further work that is under way and the legal requirements that already exist on this important matter mean that the noble Baroness feels able to withdraw her amendment. If during the passage of this Bill, or indeed afterwards, those noble Lords for whom this is a particular concern would like further discussions on what is under way, I would be very happy to facilitate that, because this is an area where we have a duty to coastal communities to show that we are on their side.

The Earl of Caithness (Con): My Lords, my noble friend gave a very helpful reply, but I was involved with safety of the fishing fleet many blue moons ago, and there is of course the private sector. He mentioned the boats, but the work of the skipper in handling the boat in difficult conditions is something beyond the control of any Government. Given climate change, our fishermen will face increased hazards with the amount of gales we seem to be getting. The noble Viscount, Lord Hanworth, raised an important point. If we are working on a sustainability basis and sustainability tells us that we should not be fishing, there has to be something else for the fishermen, particularly as we move to bigger boats with better radar. Does my noble friend have any idea what the potential is for an increase in the workforce as a result of our becoming an island state in control of our own fishing? What are his thoughts about having flexible training to give the fishermen opportunities to find alternative jobs when, for governmental reasons, they are not allowed to fish? My noble friend Lord Cormack referred to the cook—and my noble friend Lord Gardiner picked up that point—but if there were more general training, it might help them into work within the coastal community during those lean times.

Lord Gardiner of Kimble: My Lords, the whole point about sustainability is that we have moved, as I said in an earlier discussion, from 12%, I think it is, to 59% of the stocks that we know about now being fished at MSY. The whole thrust of what we want to do is to improve stocks and know more about them, so that there will be more fishing opportunities. We believe that there are opportunities, with our new arrangements, to do much more work in the short, medium and long term. We are coming on to fishery management plans and so forth, so that we are going to be more sustainable.

I am afraid that I cannot crystal ball gaze. My noble friend will know, having been a Fisheries Minister, that crystal ball gazing as to the size of the fleet or the numbers of people engaged in it over the next 30 or 40 years is difficult, but I have spoken about financial support, in terms of the new domestic grant scheme for training. One of the difficulties comes with very experienced people. This training is a continuum, and I can think of some skippers who have been at sea all their lives and therefore probably think further training is not required. Continuous understanding of different conditions, improvements in boats and in gear and equipment are all areas by which we will start to reduce bycatch and modernise fishing. They are all areas where we need to work collaboratively with fishing communities.

My noble friend may be being overly negative in his spirit about fishing opportunities. If we get to a sustainable harvest, which is what predicates all our work—the framework of the Bill is about moving towards sustainable fish stocks—then we will get to a point where we can harvest. This is a hugely important part of our food resource, in feeding our nation and beyond.

Lord Krebs (CB): I thank the Minister for giving me a chance to ask—

Lord Gardiner of Kimble: I had not finished, actually, but I will sit down.

Lord Krebs: Thank you. I have a further question in relation to the point raised by the noble Earl, Lord Caithness. Although it may be difficult to project what the size of the fishing fleet might be in the future, there are surely statistics, which I invite the Minister to quote, on the current increase in efficiency of fishing vessels in the United Kingdom fleet—that is, catch per unit effort. How much has catch per unit effort increased over the last two decades, for example?

Lord Gardiner of Kimble: I wrote to your Lordships, and I can read what I said in that letter about the size of the fleet, if that would help:

"Lord Krebs raised a question about advances in technology leading to a smaller fishing fleet. As technology advances, the UK fleet may be able to catch more fish in a more efficient and targeted way, which is one of the reasons why the Bill includes a sustainability objective. The sustainability objective in the Bill includes a fleet capacity objective, seeking to ensure that fleets are

[Lord Gardiner of Kimble]
balanced with fishing opportunities available and that they are economically viable but do not overexploit stocks. Given this objective, we will assess the impact of any additional quota that is negotiated once fishers start to fish against it, as it relates to the size of the fleet.

As to more precise details, I am afraid that I will have to write to the noble Lord.

Baroness Jones of Whitchurch: My Lords, we have had a very interesting discussion arising from these amendments. I am very grateful to the noble Baroness, Lady Ritchie, and the noble Lord, Lord Cormack, for giving us some very moving examples of the tragedies that can occur at sea. I was very taken by the noble Lord's description, and the message that came through to me was how reliant those vessels are on each other, so that a mistake by one person who does not know what they are doing affects not just that person's life or livelihood; it can actually bring the whole vessel down.

That underlines the absolute need for everybody on the boats to know what they are doing and to have the appropriate level of skills to make sure that nobody is put in unnecessary danger. The licensing regime that underpins the arrangements in the Bill provides a new opportunity for us to set standards and say, "We won't license the boat unless the people on your vessel can all prove a certain level of knowledge and skills." It happens in other industries, and I do not see why we should not have something similar in the fishing sector, so we could be more proactive on this.

4.15 pm

My noble friend Lord Hanworth challenged me on whether we need to build the workforce, and I suppose I meant building in the round rather than building a large number of other people. There is a danger anyway of an ageing workforce among those who go to sea, so we will always need a new generation to come forward. The more we can make it an attractive and skilled career, the more likely that will happen, so I do not necessarily agree with my noble friend.

We have talked about what new opportunities will arise from the Bill and from the new quotas. That is a more fundamental issue raised by my noble friend, because he was implying that all the new boats will be huge technological factory boats—super slick and able to gobble up the seas in half a day or whatever. There is a role for that, but the opportunities I saw arising from the Bill were much more balanced, both for large vessels and the smaller, under-10 metre vessels. A lot of the smaller ports and fishers want to carry on fishing in those smaller boats. We need a new generation coming through that will give people all of those different opportunities, and it is important that they all have those same skills.

I listened carefully to the Minister's response. He said that work was ongoing, which was lovely to hear, but I wonder, if he is in the mood when he writes on other things—as I am sure he will be at the end of this—to give some timescale. Ongoing work on skills and training is a lovely idea, but these things need a deadline and they need action, so it would be good to know when that work will be complete. In the meantime, I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 and 26 not moved.

Debate on whether Clause 1 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): My Lords, I am grateful for the opportunity to debate some issues that have not yet been covered in the debate on Clause 1. In particular, I refer to the political declaration, which says that

"Parties should cooperate on the development of measures for the conservation, rational management and regulation of fisheries, in a non-discriminatory manner."

I am particularly taken by Clause 1(2) and the reference to contributing to the "availability of food supplies". I recognise that the fishing fleet plays a significant role in bringing food to the table. We have just had a debate on how dangerous those activities can be, but it is important to recognise the substantial contribution it makes to the food supply in this country. Clause 1(8) states:

"The 'national benefit objective' is that fishing activities of UK fishing boats bring social or economic benefits to the United Kingdom or any part of the United Kingdom."

I make a brief plea to my noble friend. In recognising that economic link, will the Government consider the fact that active fishermen should benefit from this and that as far as possible it should not be non-fisheries activity that do? I am mindful of the fact that some of the quota is owned by non-fisheries entities—indeed, by football clubs and others. Will my noble friend and the Government take this opportunity to make sure that active fishermen will continue to benefit from the national benefit objective and from the foreseen economic benefits for the United Kingdom?

My remaining remarks relate to the precautionary principle in Clause 1(10)(b). Can my noble friend explain how the landing of fish will be recorded in every circumstance? I know that later parts of the Bill look at bycatch and discards, but how will the precautionary principle be applied and what will be the relationship between the principle and the maximum sustainable yield? Will it be enough to look at the usual understanding, which is that that will keep sufficient stock within safe biological limits? I ask this because we have been told that the Government's stated objective is to replace the equivalent objectives in Article 2 of the basic regulations of the common fisheries policy but, while some of the wording relies on Article 2, it does not entirely replicate it. For example, the precautionary objective in Clause 1 admits the requirement in the EU regulation to achieve the maximum sustainable yield exploitation rate by 2020 at the latest for all stocks. Are the Government still adhering to that objective?

There are other requirements relating to maximum sustainable yield elsewhere, particularly in Clause 6, which I shall want to debate further. Also, the ecosystem objective set out in the EU regulation requires fisheries to be managed so as to ensure that the negative impacts of fishing activities on the marine ecosystem are minimised. The ecosystem objective in Clause 1 goes further, setting an objection to ensure that negative impacts are minimised and, where possible, reversed. Will my noble friend take the opportunity to explain

why that is? I know that he has said on many occasions that we will go further than the EU, but why have we taken the opportunity to do that here?

My noble friend will understand that I do not wish to remove Clause 1, but I want to understand it better. It is important that we revert to the precautionary approach to fisheries management wherever possible, but my underlying concern is to ensure that active fishermen will be the principal definition.

Baroness Jones of Whitchurch: My Lords, I do not have a great deal to add to the words of the noble Baroness, who has obviously used this debate to ask for clarification from the Minister on a number of questions. I do not disagree with that, but I do not necessarily support the aim of questioning that Clause 1 should stand part, so I shall leave it to the Minister to answer his noble friend's questions.

Lord Gardiner of Kimble: My Lords, I am grateful to my noble friend for enabling me to wrap up why the Government feel that Clause 1 is so important to shaping our fisheries management regime for the future. The objectives, which have been under considerable discussion, support our commitment to leave the natural environment in a better state. As noble Lords are well aware, Clause 1 sets out eight fisheries objectives that will shape and guide the fisheries policies of the four fisheries administrations. They build on and develop the objectives set out in the common fisheries policy.

The aim of the first objective—the sustainability objective—is to ensure that fishing and aquaculture activities are environmentally sustainable while delivering economic and social benefits. My noble friend Lady McIntosh, particularly in raising the aim of the second objective—the precautionary objective—stresses that the absence of adequate scientific information should not justify postponing or failing to take management measures that will conserve fish stock and its environment. This objective includes our commitment to achieve maximum sustainable yield for all stocks as quickly as practically possible.

I stress that the UK has always been a strong advocate for fishing within safe ecological limits such as MSY, both in international agreements and in negotiations over catch limits for stocks we have an interest in. I say specifically that this will not change. The new provision in the Bill to produce fisheries management plans, which we will discuss at a later point, further supports this ambition.

The clause also makes clear that effective fisheries management needs to take into account the wider implications for the marine environment. The aim of the third objective—the ecosystem objective—is therefore to ensure that negative impacts of fishing activities on the marine ecosystem are minimised. This will help ensure that we have a healthy marine environment on which our fisheries resources and others rely. This includes addressing the issue of incidental catches of sensitive species. The clause recognises the need to reverse negative impacts to meet our ambition to restore our marine environment. The availability and use of good data are vital for effective management of our precious marine resources. The fourth objective, therefore—the scientific evidence objective— confirms our commitment to contribute to the collection and sharing of data between the fisheries administrations; and that fisheries and aquaculture activities are based on the best available science.

The fifth objective is the bycatch objective. Its aim is that bycatch is avoided or reduced, that catches are recorded and accounted for, and that bycatch—that is, fish—is landed where appropriate. Tackling bycatch tackles the root cause of discarding, and the UK Government remain fully committed to ending the wasteful discarding of fish, acknowledging the impact this can have on fisheries management and the marine environment.

The equal access objective confirms the position of the four fisheries administrations, which noble Lords have discussed—that UK fishing fleets should continue to have access to fish across UK waters regardless of their UK home port. Another point that my noble friend Lady McIntosh raised was on the national benefit objective. As I have set out, this recognises the importance of fishing by UK boats to our coastal communities and the UK more generally. The objective will therefore ensure that the fisheries administrations set out policies that help realise economic and social benefits from UK boats, including those under foreign ownership. In terms of UK-registered vessels, and regardless of who owns the quota, the economic link is precisely designed to ensure that coastal communities are advantaged.

The aim of the climate change objective—a new objective that came into this list—is that the impact of the fishing and aquaculture sectors on climate change is minimised and that their management adapts in response to climate change. These objectives, and the steps we will set out in the fisheries statements on how we will achieve them, are integral to protecting our precious marine environment and maintaining profitable fishing and aquaculture industries today and, of course, for the years to come. This is absolutely why it is so important to the environment that the next generation is prepared to go to sea to ensure a sustainable harvest, which is after all what we all seek.

I will look at *Hansard* to check if there were any further points that my noble friend has raised, but I have no further information so will make sure that I cover them with another letter as soon as I can. I hope that noble Lords have already received the letter arising from Monday. In the meantime, I hope that I have given her—she probably approves of much of Clause 1—the opportunity to understand that these are hugely important objectives. They set the framework from which we all must now take these matters forward. I hope that she will feel able to agree to Clause 1.

4.30 pm

Lord Teverson (LD): Perhaps I could just follow up on a couple of the things that the Minister stated are important. As he knows, one of the things I questioned on Monday was the equal access objective. He made rather a different point going through the objectives today than he did to me on Monday. If I recall, he said that that objective means there is equal access to fish. I think he said in his answer to me on Monday that the equal access is to waters, rather than to actual fish. If there is equal access to fish, that concerns me greatly.

[Lord Teverson]

I take the Minister's point about the Government not changing their attitude to sustainability. I want to make the obvious point, and I know that he will not disagree. While I would not question for a minute this Minister's—or maybe even this Government's—wish to have sustainability as the most important point, we have to make sure that that is true for future Governments, who might not have the same sensitivities as this Government. That is why we spent a lot of time on Monday trying to clarify the sustainability objective. If it is fudged, as it is at the minute, that will allow future Governments to move away from those pure sustainability objectives in marine ecology without changing the legislation.

Does the Minister see these fishing objectives as a reserved or a devolved matter? I would be interested to understand that.

Lord Gardiner of Kimble: I might need to clarify this, but on the noble Lord's first point, using "to fish" as a verb refers to the act of fishing. I will look at what I said on Monday and what I said today, but as far as I am concerned equal access enables UK fishing vessels to have that access across UK waters. This enables, for instance, English vessels to fish in what would be Scottish waters, and all the arrangements of the four fishing administrations.

The most important thing is that I do not mislead the noble Lord, or anyone, if there was a looseness of mine either on Monday or today. I am very clear that this equal access objective confirms the position of the four fisheries administrations regarding the abilities of UK fishing vessels in the act of fishing. I do not want to play with words; I want to get this right, because I believe the equal access objective is important for all four parts of the United Kingdom. This is something that the four fisheries administrations have come to agree.

We might have a collision point on sustainability. I think we all agree that, if we overfish our stocks, the safety at sea objectives will be academic, because there will not be any fish to fish. Given this set of objectives on bycatch, climate change, precaution and science, I do not think that this Government or a future Government will suddenly think that having sustainable fish stocks is not a desirable objective towards which we should all work. I very much hope that, by the time that there is a new Government, we will have achieved many of these objectives, in the same way we have gone up from 12% to 59% fishing of MSY. The objective is that we need sustainability for all stocks, and the precautionary objective is very important. One of the things that we must all wrestle with is that currently, we do not have adequate scientific information on all stocks and we need a better assessment. That is why the precautionary objective is in place. The aim is for the activities to be environmentally sustainable, while delivering economic and social benefits. As I said in the agricultural context, we must ensure that farmers produce food and enhance the environment, both of which are entirely compatible.

This Government have not invented the idea that sustainability involves social and economic considerations; this is a UN framework for interpreting sustainability. If we are so rigid that there is only one view, where will the coastal communities be? I have been thinking a lot about this and about how to deploy the arguments at Report, so I must not say too much. We need to think about ratcheting sustainability to one element of the prism, which I am prepared to say is the essential part. However, if the law said that we could not have arrangements whereby moving upwards from 59% involved nuances and an ability to keep coastal communities alive, in order to work to sustainable harvest for all stocks, that would make it a blunt instrument.

We are all on the same page, and I am sure about what we want. However, I am afraid that the Government are not going to suggest that we should not think about the social and economic consequences. I am clear, given the comments of noble Lords who spoke about sustainability and then spoke to the amendments about economic and social benefits, that we want the same thing. However, to put one objective beyond all others in what is a balanced package will result in something that none of us wants.

Baroness Worthington (CB): My Lords—

Lord Gardiner of Kimble: I think the noble Baroness will want to talk about this issue on Report. Perhaps I now regret taking us down that line, but of course, I will give way.

Baroness Worthington: On the question of balance, social and economic questions tend to take care of themselves because they create incumbents who then have power in lobbying the system we put in place. The reason why we are so interested in trying to level up the sustainability issue is that there is not a natural way to represent that in the economy. The economy is an active and very influential factor in politics—we must admit that. If it was not, we would not have seen the fish stocks collapse as they have. It is our job as legislators to think about balance: where does the power lie today, and what do we have to do to level up?

Lord Gardiner of Kimble: That is a very intriguing aspect of an issue that we will wrestle with on Report, but we are all on the same page in many respects. I need to refine my arguments, and perhaps we might then meet somewhere. I thank the noble Lord, Lord Teverson, and all noble Lords, for this rather elongated discussion.

Lord Teverson: I had a question about whether the objectives were effectively a reserved area, or a devolved area and the Administrations had come together and agreed this. Are they a reserved area or not?

Lord Gardiner of Kimble: Again, I will probably need to take some advice, possibly legal. The management of fisheries is devolved. The great thing about what has happened—I had no part in the discussions, so I can say this—is that the fisheries administrations of the four parts of the United Kingdom have come together with these objectives. I have the privilege of taking this Bill through the House, but it is at the request of, and the work of, all four Administrations.

We all know about international agreements. This is a domestic agreement between the four fisheries administrations, working collaboratively in the interests of fish stocks and of the communities, which are very important. If there is any flavour of ambiguity in what I have said regarding the legal position, I will put this information in the letter. This is absolutely the work of the four Administrations, seeking to do the right thing for fish stocks and for the communities that harvest the fish for us.

Baroness Young of Old Scone (Lab): There are still some things to answer in respect of the point raised by the noble Lord, Lord Teverson. It seems to me that the ability to deliver on the objectives in this clause depends almost entirely on the joint fisheries statements and the fisheries plans. There are quite a few loopholes that enable the fisheries administrations to wriggle around the requirements in the joint fisheries statements and the fisheries plans—extenuating circumstances, as it were.

We are in a strange position. Although the objectives may well be shared by each of the four fisheries administrations, because of the way they are implemented—through the joint fisheries statements and the plans that have to adhere to the statements, except where there are extenuating circumstances—we might find that these are very delegated, very devolved decisions. We may be lost between the devil and the deep blue sea, if that is not the wrong thing to say about a Fisheries Bill.

Lord Gardiner of Kimble: This piece of work is an honest endeavour. Yes, the issues are devolved unless they are internationally related. All objectives must be interpreted proportionately—that is a requirement of the Bill. Interestingly, I have come across a number of noble Lords who would have been wholly in favour of devolution but, now that this actually is devolved, think that there may be problems. We are working very collaboratively with the devolved Administrations. Of course, there are a lot of totemic issues for many of those communities—indeed, in England this is also a totemic matter.

I think the noble Baroness has one or two amendments on this matter in later groups. We have to be frank: these are devolved matters and that is why the coming together of the four fisheries administrations for this Bill is really important. We should see that achievement as a positive, rather than a negative.

Baroness McIntosh of Pickering: My Lords, I am very grateful to have had the opportunity to debate what I thought were non-controversial matters. Part of the answer is that this Bill provides the legal basis on which the fishing authorities of each of the four nations will proceed, so we are giving legal clarity as we go along. I think that is very helpful.

I just wanted to put down a marker regarding my remaining concern. There is a gap in our knowledge of fish stocks, which is presumably why Clause 1(10) exists. Even ICES cannot explain where the species have gone that have moved out of our waters and European waters generally because the waters are warming. We are not fishing in the areas, so we do not know. That may pose a bigger problem as climate change proceeds. It is entirely appropriate to have climate change and all the objectives in the Bill.

I am very grateful for the debate, and I will not oppose the clause.

Clause 1 agreed.

Amendment 27 not moved.

4.45 pm

Amendment 28

Moved by ***Lord Cameron of Dillington***

28: After Clause 1, insert the following new Clause—

"Duty to achieve fisheries objectives

Any public authority having any function relating to fish and aquaculture activities or fisheries management must exercise its functions in order to achieve the fisheries objectives."

Member's explanatory statement

This amendment is to place a legal duty on any public authority with any function related to fisheries to achieve the objectives.

Lord Cameron of Dillington (CB): My Lords, this amendment largely speaks for itself. It is all very well having all the noble objectives in Clause 1—made, one hopes, even more noble if some of our discussions to date bear fruit in the future—but, as they used to say in 16th-century diplomatic circles, "Fine words butter no parsnips".

Once we are cast adrift on the post-Brexit realities of running our own fisheries, there will be numerous parties all promoting their own visions. The parties will range from the fishermen themselves to the local communities, local authorities, LEPs, the MMO and the devolved nations. They might even wiggle, as the noble Baroness, Lady Young, said a moment ago. They will also include the Secretaries of State at Defra and BEIS—after all, fishing is an industry and a business—and even the Secretary of State at the Department for International Trade. I suspect that at some point in the future—probably quite a long time down the line—they will have priorities that do not necessarily liaise with the objectives in Clause 1. The visions of all those bodies will be influenced by wholly separate objectives that might or might not be in line with Clause 1.

Politics in action, both local and national, has a tendency to be influenced by lobbying, usually involving specific interests, and, as Harold Macmillan was apparently wont to say, "Events, dear boy"—both of which tend, in turn, to be influenced by rather shorter-term objectives than the long-term sustainable priorities that we are all trying to achieve in Clause 1.

My amendment is hardly dictatorial, but I hope that it is a good starting point for discussion. The Minister will remember our debate last year on the then Natural Environment and Rural Communities Bill, in which local authorities were given a "must have regard to" obligation concerning the environment and biodiversity. What happened? In most cases, absolutely nothing. The noble words of the objectives in the NERC Bill did not enter anyone's thinking or area of responsibility. Other problems such as roads, housing and the local economy were more pressing—that is the lobbying

[Lord Cameron of Dillington]
influence—and austerity overtook any good intentions that there might have been. That is the "Events, dear boy" bit of the equation. We must not let that happen to our sustainable fisheries objectives.

In his reply, the Minister will no doubt refer to Clause 2(1)(c), where the fisheries policy authorities have to make a statement on how "proportionately" they have applied the Clause 1 objectives—but what mealy-mouthed words are those? I totally support Amendment 30, which would remove the word "proportionately". In spite of that, there is no legal obligation even to have a duty of care towards the Clause 1 objectives, let alone to promote and implement them, which is what I am trying to achieve.

The Government will also likely argue that the joint fisheries statements and fisheries management plans are where the policies that will achieve the fisheries objectives will be set out and that, as the joint fisheries statement and fisheries management plan will be legally binding, there is no need to have a commitment on the face of the Bill to achieve the objectives. However, there is currently too much flexibility around how the joint fisheries statements and fisheries management plans are to be drafted, and no detail about the timeframes. Moreover, there is the ability to opt out or amend the joint fisheries statement where there is a "relevant change of circumstances", as referred to in Clauses 7 and 10. A relevant change of circumstances can include a socioeconomic change—"Events, dear boy".

Experience in Scotland, which has a similar provision in the Marine (Scotland) Act, has shown that, where that opt-out exists, environmental considerations can get pushed to one side in favour of economic impacts, and important measures that could benefit the environment are not taken. Six years after the designation of the Small Isles Marine Protected Area, fishing continues unchecked over the protected features, because a hole in the Act has allowed the authorities to opt out. I am trying to prevent such a hole in our Bill. In his reply a moment ago, the Minister referred to this: that, while unlikely, there is a risk that a future Government might not be so committed to sustainable fisheries, and they could amend fisheries management plans or let aberrations in those plans, or in joint fisheries statements, go through unchecked.

Frankly, my Lords, without my proposed new clause inserting a legal duty to achieve the fisheries objectives, Clause 1 is merely a series of hopeful words. As I say, it will certainly butter no parsnips—nor, for that matter, sustain a long-term and profitable UK fishing industry.

Lord Krebs: My Lords, I speak in support of my noble friend's amendment, and apologise for not being here on Monday as I was overseas and unable to join the debate. However, I read the account in *Hansard* very carefully, and it seems to me that, as has indeed been said this afternoon, one of the key problems that a number of us have with the Bill relates not to its apparent intent—we are very happy with that—but the amount of wriggle room that is left in the Bill.

We heard again, in the comments of the noble Lord, Lord Teverson, a few minutes ago, about the wriggle room around the meaning of sustainability. We all agree that sustainability has three pillars—the economic, the social and the environmental—but there is a question of how you balance them. The Minister referred to the need to balance them, but how you do this leaves a great deal of wriggle room. I will not repeat the arguments that were rehearsed on Monday, and again briefly earlier this afternoon, about the way in which economic considerations will always tend to trump environmental considerations because the short term is here and now, and the long term is the next generation's problem.

This amendment that my noble friend Lord Cameron of Dillington is proposing is attempting to narrow down a further possibility of wriggle room. As he has so eloquently explained, without a legally binding commitment on the noteworthy and honourable and desirable objectives, it is not clear whether they will be adhered to in the fisheries statements and fisheries management plans. So the question for me is: who is going to be accountable if the objectives are not met, and what sanctions will be placed on the fisheries authorities, or other bodies, if that happens? I do not wish to repeat the arguments that my noble friend Lord Cameron of Dillington rehearsed so eloquently, but I would like clarity on the question of accountability.

Lord Lansley (Con): My Lords, I declare my interest again today—if I may do it once, rather than each time I speak. As I mentioned on Monday, the company of which I am a director is in a partnership with an agency whose clients include UK fisheries.

I know we discussed this, but with Amendment 28 the noble Lord, Lord Cameron, has enabled us to illustrate a question. It will be interesting to hear my noble friend's answer, but I am afraid I cannot bring myself to agree that the amendment is needed. By virtue of Clause 10, national fisheries policy authorities are required to make fisheries statements—either a joint fisheries statement or a Secretary of State fisheries statement—and fisheries management plans, and they are obliged to do so in ways that show how they wish to balance the objectives.

We know that there are eight objectives. We discussed all that on Monday, as the noble Lord, Lord Krebs, quite rightly said. We acknowledge that this range of objectives presents a particularly testing task for the fisheries policy authorities. There is a relatively large number of objectives and several are, in themselves, relatively testing. As far as I can see, virtually none of them can be said either to have been achieved or not achieved. One is always in a process of seeking to achieve them. The balance that is struck, and the extent to which one achieves those objectives, is entirely the issue.

Clause 10 makes it clear that, whenever the national fishing policy authorities engage in anything to do with fishing or aquaculture, they must seek to apply the objectives in doing so. That is the link between Clause 1 and the rest of the Bill. Why then do I think that the noble Lord, Lord Cameron, has asked an interesting question, to which I do not know the answer? It is because he said that there are many public authorities that are not necessarily fisheries policy authorities. This is true. When setting objectives in relation to one sector of governmental activity, we would not normally expect to include a clause every

time saying, "Oh and by the way, it must apply to every sector of government whatever it happens to be doing." I do not go down that path; but, in this instance, we live in a world where the relationship between access to fish stocks and quota will potentially, in certain circumstances, be part of the same negotiation as the trade and market access relationships that we have with other countries.

My question, off the back of the noble Lord's amendment, is: are the fisheries objectives—and, by extension, joint fisheries statements and the like—regarded as equally applicable to the Department for International Trade as to any national fisheries policy authorities?

Lord Swinfen (Con): My Lords, perhaps I might seek clarification from the noble Lord, Lord Cameron. As I read his amendment, it could equally apply to fresh water—rivers, streams and lakes—as well as the sea. I do not think that that is his objective at all, or the objective of the Bill, but as I read his amendment, it could also deal with freshwater fishing.

Lord Cameron of Dillington: My Lords, as far as I am concerned, I am dealing only with coastal fisheries and marine fish.

Baroness Byford (Con): My Lords, I looked at this very carefully as it is a fairly concise amendment. I picked up on the three words—and indeed, the noble Lord, Lord Cameron, has kindly enlarged and reflected upon them—"any public authority". That, to me, is huge, as there are so many different aspects of public authority. It goes on to say

"having any function relating to fish and aquaculture activities … must exercise its functions in order to achieve the fisheries objectives."

I have no disagreement with the noble Lord, or indeed with other Members who have spoken on the need for sustainability; that is, I hope, accepted around this Chamber. But I was a little alarmed. I started noting down county councils, local councils, borough councils, police and all sorts of different authorities. I wonder whether the noble Lord would consider slightly narrowing his expression. Knowing the immense pressures on so many of these authorities at this time, I wonder if it is not a step too far. While I accept in principle the thrust of what he is trying to do, I think that referring to "Any public authority" having "any function" is too open-ended and goes a bit too far.

Lord Mackay of Clashfern (Con): My Lords, I see the need for something like the amendment tabled by the noble Lord, Lord Cameron, but I find it difficult to believe that any public authority will necessarily have the power to

"exercise its functions in order to achieve the fisheries objectives."

Is an authority supposed to cover all of them, part of them, or what? I cannot see how that can work, where there are different authorities, some of which have a marginal connection with fisheries and aquaculture—such as the enforcement authorities, for example. I have tried, in a later amendment, to approach this subject in requiring the plans to set out how they have integrated the fisheries objectives.

5 pm

I do not claim that my amendment would be any better or more effective than this amendment, but I do say that this one has a difficulty, in putting on public authorities an obligation that many of them may have no power to accomplish. In particular, if they have to do the whole lot—that is, to achieve all the fisheries objectives—that seems a tall task to give every public authority. Yet that is what the amendment seems to say. However, I agree that we must attend to the expectation that fisheries authorities are not there just as matters of speculation but are supposed to be practical.

Lord Teverson: My Lords, I strongly support the amendment. It is obvious common sense. When I first read the Bill I never even thought about there being a gap, but as soon as we see the amendment we have that lightbulb moment: there is a gap. As the noble Lord, Lord Cameron, said, if no duty is stated in the Act, this just will not happen. I have been critical of the number and style of some of the objectives, and the fact that there is no priority within them. However, I am clear that once this has been resolved—or even if it remains as it is—that duty must be there.

On Monday we had a debate on an amendment of mine about the office for environmental protection, and I would have thought that this amendment would strengthen that body's role in making sure that some of the things in this area happen. I do not know whether or not the Government would like that, but if there is a duty there, there will be much more ability to enforce the objectives that the Government and the devolved authorities feel are so important.

I take the noble and learned Lord's point about the range of authorities. Maybe that needs reconsidering; I am not sure. We should not forget that many unitary local authorities on the coast of England are strongly involved in inshore fisheries and conservation authorities —IFCAs—which in many ways are an animal of local government. We should remember that public authorities include not only the devolved authorities, the Secretary of State or the enforcement organisations, but local authorities, which are at the heart of much of the management of our territorial waters—the 0-6 mile limit.

I strongly support the amendment, and even if it is not perfect I encourage the noble Lord to bring it back on Report—if, indeed, he does not intend to test the opinion of the House this afternoon.

Lord Grantchester (Lab): I too am grateful to the noble Lord, Lord Cameron, for tabling Amendment 28, and to other noble Lords who have made comments in this short debate. I agree that, although the drafting may not be entirely correct, we must not lose the crucial point. The amendment raises an important matter, because at this juncture, as the UK becomes an independent coastal state outside the EU, there must be a signal to the whole industry, including any relevant public authority or other body, that it must make sure that its strategic objectives align with this reality and that it sets its strategic direction towards supporting the fisheries objectives included in Clause 1.

[Lord Grantchester]

It is worth repeating that, although many of those objectives are a legacy of the UK's membership of the common fisheries policy, they have been expanded, updated and made more relevant to the UK, with the addition of three important key objectives. On Monday I drew attention to the new climate change objective. Adding this duty for public authorities to have regard to the objectives means that they must ensure that their activities comply and that any objective is not overlooked. My noble friend Lady Jones of Whitchurch, my colleague on the Bill, has tabled further probing amendments in the next group of amendments, which begins with Amendment 30, probing the use of the term "proportionality" in relation to the application of the objectives in future joint fisheries statements.

It is not just fisheries authorities that have a role in aquaculture activities in ensuring success. Other public authorities with responsibilities that will have an impact on the industry must play their part, be that regulating standards, carrying out inspections at ports and processing plants or whatever. There is little mention in any guidance on this matter, and perhaps that is something that should also be looked at. There is real concern that other priorities in different localities may take precedence over these national objectives, particularly in relation to the key objectives relating to sustainability and climate change. This is crucial to understanding the main reasons why the UK could make a difference to fisheries and fishing communities now that it is outside the CFP.

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I am grateful to all noble Lords for contributing to the short debate on this important subject. I am particularly grateful for Amendment 28, proposed by the noble Lord, Lord Cameron of Dillington, which would require public authorities to exercise their functions in a manner to achieve the fisheries objectives.

While I fully support the principle that our public authorities should support the achievement of the fisheries objectives, I believe that the amendment, which would place a blanket duty on all authorities, would not be suitable, as my noble friend Lady Byford so rightly pointed out. For instance, there has been no consultation with local authorities, and the new duty could lead to them having to prioritise fisheries management over the many other responsibilities that they have. A number of noble Lords have commented on those tensions.

The role and function of each public authority is set out in its implementing legislation. Each authority will vary how it exercises its functions on a case-by-case basis, and any local responsibilities to manage the 0-6 nautical mile zone will be delivered through the inshore fisheries conservation authorities. In some circumstances, elements of an authority's function may not accord with some of the fisheries objectives. It would therefore be impractical for the Fisheries Bill to place a legal duty on such an authority. As my noble and learned friend Lord Mackay pointed out, the local authorities and public bodies may well not have the power to achieve these objectives legally.

Key fisheries regulators—the Marine Management Organisation and the inshore fisheries conservation authorities—also already have sustainable development duties under the Marine and Coastal Access Act 2009, and I hope that the noble Lord, Lord Teverson, and other noble Lords are reassured by this. Contrary to the intention of the amendment, its effect could also be to dilute the accountability of fisheries administrations, which is clearly established by the Bill, by spreading responsibility for the objectives more broadly across public authorities.

In answer to the specific questions from the noble Lord, Lord Cameron, the current scope of the functions of the relevant national authorities cover the primary fisheries management tools and activities. We appreciate that local public authorities provide an important role in the achievement of successful fisheries management. However, key activities and functions are covered by the joint fisheries statement, due to their dependency in decision-making on national authorities—for example, in confirming by-laws. The fisheries statement is also legally binding.

Clause 2(1)(c), which the noble Lord, Lord Cameron, asked about, requires a statement on how fisheries objectives have been interpreted and proportionately applied. This will ensure a clear explanation of how the policies in the JFS meet the objectives and how their application is tailored to each specific case. It is worth highlighting that noble Lords will scrutinise the JFS before it comes into effect.

By holding fisheries administrations to account for the policies that they commit to in the statutory statements and management plans that will be created under the Bill, we are providing a strong framework for accountability that also recognises that fisheries authorities cannot unilaterally deliver on all these objectives but must to varying degrees work in partnership with industry. As the noble Lord, Lord Krebs, rightly pointed out, fisheries administrations will be accountable for meeting the policies in the JFS, and this could be something that the Office for Environmental Protection chooses to scrutinise.

Clause 10 makes the policies legally binding. Under these objectives, all must to varying degrees work in partnership with industry, stakeholders and international partners in some cases.

I was grateful to my noble friend Lord Lansley for his helpful comments. The range of objectives does present a challenge, but Clause 10 makes it clear that the policies are legally binding. I hope that, with this explanation, the noble Lord will feel able to withdraw his amendment.

Lord Lansley: I asked a question, but I do not require an answer now. In so far as the Department for International Trade, for example, is engaged in trade negotiations that might impact on fish stocks because of market-access considerations, it will do so by exercising prerogative powers. It does not have duties derived from statute. So it might be interesting to know whether the Government regard these fisheries objectives as relevant to the task that the Department for International Trade will perform.

Lord Teverson: I will make a point very quickly. I was slightly disappointed in the Minister's response when she said local authorities had not been consulted in any way on this Bill. The IFCAs—which are incredibly

important vehicles for the conservation of sea fish within the six-mile limit around our coast—are very much creatures of local government. Some of their members are appointed by the MMO, but they are largely local authority organisations, and are significantly funded by local authorities. I wonder whether a consultation —at least with the LGA—might have been a good thing. So I do feel some disappointment.

Baroness Bloomfield of Hinton Waldrist: In answer to my noble friend Lord Lansley's question, it probably would be better if I wrote about the international trade position on these objectives. I said that we have consulted with the inshore fisheries conservation authorities, which would have had their own contacts with local authorities. So while perhaps not directly, they would have been indirectly involved in all these discussions.

Lord Cameron of Dillington: I thank noble Lords for taking part in the debate and, on the whole, for their support of the principles involved, or indeed the accountability of the fisheries authorities. I totally accept that the amendment may have been too loosely drawn up, for which I apologise to the House. The objective was to create a discussion and a response on whether the objectives in Clause 1 are worth more than the paper they are written on. I am not totally sure we received any real assurance on that point, but I will read *Hansard* and maybe come back to it. In the meantime, I beg leave to withdraw my amendment.

Amendment 28 withdrawn.

Amendment 29 not moved.

Clause 2: Joint fisheries statement

Amendment 30

Moved by ***Baroness Jones of Whitchurch***

30: Clause 2, page 3, line 12, leave out "proportionately"

Member's explanatory statement

This amendment removes the word "proportionately" in relation to the application of the fisheries objectives when formulating the policies and proposals in the joint fisheries statement.

Baroness Jones of Whitchurch: My Lords, I shall speak to Amendment 30 in my name and Amendment 42 in the name of my noble friend Lord Grantchester.

Amendment 30 questions what it means for a joint fisheries statement to interpret and apply the fisheries objectives "proportionately". This is an issue that we were beginning to flag up in the previous debate. We have removed the word "proportionately" to probe this drafting further. As we know, we have spent considerable time delving into the wording of the fisheries objectives, and we have been very keen to get the wording right so that it can be consistently applied. I do not intend to reopen that discussion again at the moment, but what does it mean to have to apply those objectives only "proportionately"? There seems to be little guidance or restriction on the extent to which fisheries policy authorities should comply with the objectives. There is therefore no reassurance that the policy statements will deliver effective policies to achieve these objectives.

We could end up with different policy authorities putting different weight on their responsibility to deliver, with different timescales and different monitoring procedures. If they apply the objectives "proportionately", it could mean that other objectives not specified in the Bill could be weighed against those set out here. If we do not get this right at the top level, it will filter down to the fisheries management plans and undermine all the good work in setting meaningful objectives in the first place. All this feels a little unsatisfactory. As the noble Lord, Lord Krebs, said in the previous debate, we remain concerned about the wriggle room in these objectives, and this is another manifestation of that.

5.15 pm

When we met the Minister and his officials the other day, it was argued that "proportionately" was in the Bill so that fisheries authorities have the discretion to decide on the appropriate balance between the various objectives. I understand that point at one level, but it does not seem to be how the Bill reads at the moment. I hope that the Minister will concede that there should be a better way of delivering the objectives with the degree of flexibility that he seeks but perhaps not with this wording.

Amendment 31, in the name of the noble Lord, Lord Teverson, deals with the issue of fish crossing national boundaries and the obvious need for UK policy decisions to be taken with the international nature of fisheries in mind. Amendment 32 would require fisheries authorities to outline how they had complied with obligations under UNCLOS and other agreements. We agree that this makes sense. If the authorities are doing it anyway, it should be straightforward for them to provide the evidence. We therefore support both amendments.

Amendment 42, in the name of my noble friend Lord Grantchester, deals with recreational fishing, which we touched on in an earlier debate. Our amendment would require the Secretary of State to include policies relating to recreational fishing in the Secretary of State's fisheries statement if they are not already present in the joint fisheries statements. Recreational fishing is an important and growing leisure activity involving many more individuals and boats than the commercial fishing fleet. It is also more environmentally sustainable. Defra's own studies show that nearly a million UK citizens go sea-angling every year for recreation or personal consumption. Annually, their activities generate total economic activity of well over £2 billion and support more than 20,000 jobs. Recreational fishing could play an increased role in reviving our smaller ports and coastal communities, and it deserves our support.

The amendment would build on a commitment given in Committee in the Commons in a previous Session. It was George Eustice himself who suggested that the Government could add a reference to recreational fishing to what was then Clause 2. The clauses have now been reorganised and the first section of the Bill redrafted so the placement would be different, but we expect the Government to uphold that previous promise and look forward therefore to hearing from the Minister how he intends to deliver this. I beg to move.

Lord Teverson: My Lords, I support the amendments in the name of the noble Baroness, Lady Jones, and the noble Lord, Lord Grantchester. It is always useful

[LORD TEVERSON]
to go back to the Government's own approach to negotiations published in February. In part 2 of the document, headed "Other Agreements"—maybe fisheries did not quite get the profile it should have done in the document—paragraph 3d states:

"The UK is committed to acting as a responsible coastal state and to working closely with the EU and its Member States and other coastal states on the sustainable management of shared stocks in line with our international obligations."

How could I ever improve on that? It is absolutely on the button.

It is therefore completely in line with government policy that we should put those agreements within the statements. That would make the statements far more comprehensive. This is a good part of the Bill, in that it deals with a lot of the areas that we are concerned about, but there are gaps in two areas. The first is in respect of those agreements that have been reached on adjacent stocks. Let us not forget that something like 80% of UK fish stocks are shared with other EEZs, so it is a positive thing to include that in those lists. Secondly, given the Government's right focus on complying with international agreements—the Minister has referred to it many times—it would be good to boast and be proud of how we have implemented and complied with those obligations. That is obvious and would be helpful, and I hope the Government would not find it difficult to agree.

On Amendment 34, it seems to me that that part of the Bill is mealy-mouthed. We ought to be able to go beyond sustainability, whereas that clause seems to suggest that sustainability is all that we need to aim for. It may be the way it is phrased, but it is almost as if we need to stop once we have achieved sustainability or MSY. I want to go beyond that to a much more bountiful harvest, if that is possible.

Lord Cameron of Dillington: My Lords, I have put my name to Amendment 31 in this grouping because I think it is important that we put in place agreements with other nations who host most of the stock we live on.

When I first heard that a new UK fisheries policy was one of the primary reasons for Brexit, I scoffed, because surely fish do not understand national borders. As we know, they move about and we can never have a fishing policy without close co-operation with our neighbours. But that was before I understood the absurd principles of relative stability and how our total allowable catch was based on fishing records from the mid-1970s, when our large fleet was fishing around Iceland before the cod wars and our inshore fleet kept very few records, and before climate change moved our national dish of cod into northern waters. Did your Lordships know that we are only 8% self-sufficient in cod? Furthermore, we currently consume in the UK three times the total EU quota of cod. We are no longer blessed with being—as I was taught in my childhood—an island built on coal and surrounded by cod. Climate change has changed all that. So, to some extent, our fishing arrangements with Norway, the Faroes, Iceland and even Russia are going to be as important as our fishing arrangements with the EU.

But the problem for the EU fleets is that their catch, like ours, has moved north. Therefore, they catch a lot of their fish in UK waters. The European Fisheries Alliance reckons that cutting them off from our waters would slash profits for the EU fleets in half, leading to job losses for at least 6,000 people. A fish war with the EU, or at least clashes between boats, is not such a remote possibility, which is why the EU Commission has given itself the powers to command any or all EU fishing boats to return to port. They have also allocated funds from the EMFF to compensate fishermen forced to retire due to Brexit.

The EU is also gearing itself up for the possibility of tariffs or other restrictions on the 60% to 70% of the UK catch that is currently exported to Europe. I have often thought that one of the best ways we could spend the replacement for European Maritime and Fisheries Fund money would be to have a massive marketing campaign to stop us eating so much cod and persuade the great British public to eat more of the fish we produce. Sadly, I suspect that the great British public could not afford to do that, even if they were so inclined.

We all hope that it will not come to clashes at sea, but the point of this amendment is to prevent future clashes with our neighbours while at the same time ensuring that we use the best up-to-date science to sustain our fishing stocks. Zonal allocation is a far better way of distributing quota among national fishing fleets than the historically based quotas. The seas are always changing, and so are the fish within them; this amendment is an effort to take account of that fact.

However, the problem is that looking at relative stability terrifies the Europeans—opening up a whole can of worms for them, from the Black Sea to the Baltic—even if they know in their hearts that it is the right thing to do. We have to enter into very serious negotiations with not only them but our other fishing neighbours in order to achieve sustainable fisheries.

Lord Krebs: My Lords, a few years ago I had the great pleasure of serving on the Energy and Environment Sub-Committee of the European Union Committee, under the very able chairmanship of the noble Lord, Lord Teverson. In our inquiry into Brexit and fisheries, we heard very compelling evidence about the management of shared stocks and nobody, from the fishing industry to private fishermen to the Minister at the time—now the Secretary of State for Environment, Food and Rural Affairs—disagreed that any policy for the management of UK stocks has to take into account the fact that many of our stocks are shared with other European countries and, therefore, we cannot develop plans on our own.

For me, one of the more compelling anecdotes was the case of species that spend the earlier part of their life in, for example, French waters, and later move into UK waters. One could envisage a future situation in which, in this case, the French might say, "Okay, we will harvest the younger fish and leave the older ones for you." Of course, there would not be any older ones. I just emphasise that all the evidence I heard in that Select Committee inquiry three years ago makes a very compelling case for this amendment on shared stocks.

Lord Gardiner of Kimble: My Lords, I am grateful to all noble Lords, particularly the noble Baroness, for this debate. This provides me with the opportunity to explain a little more about why we have drafted the provisions and proposals for the joint fisheries statement as we have done, and why this clause has been written with a requirement that proportionality is considered when formulating the policies and proposals in the joint fisheries statement.

The requirement for proportionality, which Amendment 30 would remove, is because the fisheries objectives work together to set out the core principles that should be followed to achieve a successful and sustainable fisheries management regime, with the joint fisheries statement setting out the policies that will contribute to achieving our objectives. These policies will focus on key areas of our fisheries management, both to protect the environment and enable a thriving fishing industry. We will achieve this ambition only if the fisheries objectives are proportionately applied to the policies in the joint statement. A requirement for proportionality was included to provide reassurance that the fisheries administrations will take a balanced approach in the development of policies and proposals. The joint fisheries statement on proportionality will be scrutinised as part of the consultation and the legislative scrutiny process so that if there were any concerns that needed to be raised, they would be raised prior to the statement's adoption.

Amendments 31 and 32 both relate to our intentions in the international sphere. Amendment 31 would require us to set out how we will co-operate with our regional neighbours in managing shared fish stocks. This is clearly an extremely important consideration in fisheries management. However, the UK is already bound by international law, as I know noble Lords know, to co-operate with other coastal states on the management of shared stocks; for example, through the UN fish stocks agreement—UNSFA—which establishes a comprehensive regime for the management of such transboundary fish stocks.

We are taking the necessary steps to build the active role we need to play internationally as an independent coastal state that takes its rights and responsibilities under the United Nations Convention on the Law of the Sea—UNCLOS—very seriously. For example, we will participate as a sovereign nation in negotiations on mackerel stocks and are joining several priority regional fisheries management organisations in our own right. We are keen to develop new framework agreements with our neighbouring coastal states for annual co-operation on fisheries of shared interest. The noble Lord, Lord Cameron of Dillington, was absolutely right to refer to scientists: of course, we have some world-class fisheries scientists and scientific institutions in this country, and fully intend to continue to play a leading role in the International Council for the Exploration of the Seas.

5.30 pm

Having left the EU, our international environmental obligations remain unchanged. As implied in Amendment 32, a significant amount of what we do in fisheries management, both domestically and internationally, is underpinned by international law and obligations. Meeting the objective set out in the Bill to restore stocks to levels capable of producing maximum sustainable yield will require working with our coastal neighbours to agree sustainable catch levels for shared stocks. The noble Lord, Lord Krebs, is right and I agree: UNCLOS obliges us to co-operate with other coastal states on shared stocks, and we will do so.

We will set out our approach to achieving this objective in the joint fisheries statement and will report on the extent to which the objective has been achieved in subsequent reviews. In so doing, we will in effect be reporting on the extent to which we have complied with our obligations—for example, under UNCLOS—to manage our stocks sustainably and in co-operation with our regional neighbours.

In practical terms, the amendment as drafted poses some challenges. First, Clause 2 is forward-looking, requiring the fisheries authorities to set out how we will meet the fisheries objectives, including policies that will also support us in meeting our international obligations. This will allow scrutiny of our policy plans before and during their implementation. My understanding is that the amendment asks only that the administrations report on compliance after the policies have been implemented, which overall could lead to less scrutiny of the UK Government's policies and actions. I am pretty certain that that is not what was intended, but that is my advice on how it would be interpreted.

Secondly, the United Kingdom is a signatory to more than 14,000 international treaties, not all of which are related to fisheries policy. I am informed that the technical effect of this amendment—I am sorry, but my task is to report back on such technical issues when this goes through the legal mincer—is that it would require each administration to report on all of these, regardless of its links to fishing. Again, I do not imagine that that is what was intended, but that is the legal interpretation. I reassure noble Lords that the UK already reports regularly and in detail on progress against conventions and obligations, ranging from implementation of the sustainable development goals to the Convention on Biological Diversity.

Amendment 42 seeks to highlight the importance of the recreational sea-fishing sector. Recreational sea fishing makes a valuable contribution to the UK economy. It has been estimated that in 2012, taking indirect and induced effects into account, sea angling supported £2.1 billion of total spending, more than 23,600 jobs and almost £980 million of gross value added in England alone. As well as making a clear economic contribution, angling provides health and well-being benefits for those individuals who participate. My understanding of the figures is that this represents around 2% of England's adult population.

For these reasons I am pleased that the Bill provides the Secretary of State, for the first time, with the power to arrange financial assistance for the promotion or development of recreational fishing. In addition to this new power to provide financial assistance to the sector, all references to fisheries in the Bill include recreational as well as commercial fishing unless otherwise stated, as set out in paragraph 62 of the Explanatory Notes. Recreational sea fishing will contribute to the

[Lord Gardiner of Kimble]
delivery of the UK fisheries objectives, along with commercial fisheries and aquaculture. The Bill does not list all the sectors for which the joint fisheries statement might be expected to include policies and it is not appropriate to single out recreational fishing. The nature of the joint fisheries statement is that it is designed to include all policies relevant to the achievement of the fisheries objectives across both commercial and non-commercial fishing wherever relevant.

I am therefore confident, for the reasons I have outlined, that the previous commitments in relation to recreational sea angling have been honoured within the current text of the Bill. We understand our legal and international obligations, which we are signatories to, and this country is well regarded in upholding them—we are recognised as a country that seeks MSY—so I hope that, with the reassurances on these varied matters, the noble Baroness will withdraw her amendment.

Baroness Jones of Whitchurch: I thank all noble Lords who have spoken on this issue, and the Minister for his response. We are flogging the same issue of proportionality over and again with different wording. I was not totally convinced by the Minister's response. He talked about the need for a balanced approach between all the different objectives. We have already rehearsed the fact that that could lead to an unbalanced approach if we are not very careful, or the wrong objectives coming to the top in the hierarchy, so I am slightly anxious about that. I took it from the Minister's reply that it would not be appropriate for other objectives that were not already listed to be put in that balance. If that is what he was saying, it is certainly reassuring.

The noble Lord, Lord Teverson, made a very compelling case on the international issues and I am not sure that the Minister managed to unravel it, particularly on the first amendment. There will be a need for us to carry on co-operating with our international neighbours, so I do not see what would be wrong in putting that in the joint fisheries statement alongside all the other tasks that have to be carried out. It is not a minor issue: it will be a major part of the authorities' functions. I hope the noble Lord, Lord Teverson, will reflect on that because I think it is worth further discussion. It may be in a slightly different form of words, but that balance—

Lord Teverson: I assure the noble Baroness that, in the next group, I will very much take hold of that issue.

Baroness Jones of Whitchurch: We are rehearsing and repeating some of these debates, but that was very reassuring to hear, and I am glad the noble Lord has taken that on board.

The Minister's point that we will report after the event, rather than be forward-looking, was well made and we need to reflect on it. I was a bit disappointed by his answer on recreational fishing. It is not just about funding or having access to financial assistance but more about the importance of recreational fishing. As I said to the Minister—and he reflected it back to me—it is a major part of the fishing sector, not a minor part. It employs more people and involves more money and jobs, so to say that the joint fisheries statement should not explicitly take account of that does not feel right to me. Again, we may not have put the amendment in the right place, but I think we can firm it up in some way. I will reflect on his comments in *Hansard*. It may be another one of those issues that will crop up somewhere else during the course of the Bill. For the time being, I beg leave to withdraw the amendment.

Amendment 30 withdrawn.

Amendments 31 and 32 not moved.

Amendment 33

Moved by ***Baroness Jones of Moulsecoomb***

33: Clause 2, page 3, line 35, leave out from "to" to end of line 36 and insert—

"(a) restore one or more stocks of sea fish to, or maintain them at, sustainable levels, and

(b) in respect of fish activities for the one or more stocks of sea fish referred to in paragraph (a), achieve the ecosystem objective."

Member's explanatory statement

This amendment requires the ecosystem objective to be achieved whenever policies to maintain or restore a particular fish stock are set out.

Baroness Jones of Moulsecoomb (GP): My Lords, as the noble Baroness, Lady Jones of Whitchurch, has just pointed out, we seem to be repeating ourselves because we are going around in circles. As I said the other day, if you do not have environmental sustainability, you do not have social or economic sustainability. The Minister is not hearing that, or certainly not agreeing with it, and nor are his advisers. They just do not seem to get the basic premise that if you do not have a healthy planet, you do not have anything else. You cannot make deals with nature. Nature can heal itself, but not with all our interventions. The noble Baroness, Lady Worthington, has pointed out that we are essentially the voices of the environment here because there are no huge and powerful pressure groups supporting it.

I am also going to have to repeat the fact that the Conservative Party manifesto made a commitment to the people of Britain who voted for the Conservatives that there would be a legal commitment to fish sustainably, so it should be in this Bill. It is no good saying that it is in other places; it has to be in this Bill because only then will people understand that it is an incredibly important component of the whole fishing industry. Ecosystems are part of that sustainability and it all has to work together holistically. At the moment, the mechanisms in the Bill are quite disjointed and have to be tidied up, and presumably an awful lot of Members of this House would be very happy to contribute to that.

Amendment 33 aims to ensure that the fisheries management plans are made in the context of the ecology that they will affect. It is impossible to change the dynamics of one species without creating a whole load of repercussions, possibly unknown ones, within the ecosystem. More predators might lead to fewer prey, for example, while more prey might lead to more predators. Sometimes, the best interventions might be

farther down the food chain, such as increasing the population of microscopic plankton which will then support higher populations all the way up the chain. The fisheries management plans would better be regarded as being ecosystem management plans and should be made with the purpose of achieving the ecosystem objective. I beg to move.

The Deputy Chairman of Committees (Baroness Henig) (Lab): I should tell the Committee that if Amendment 33 were to be agreed to, I would not be able to call Amendment 34 on the grounds of pre-emption.

Baroness McIntosh of Pickering: My Lords, I should like to speak to Amendment 49A in this group, which would insert the words

"having regard to the precautionary criteria for stock biomass."

I am wedded to the idea of the importance of a fisheries management plan to embellish what is set out in Clause 2 on the joint fisheries statement. My noble friend has spoken at some length elsewhere about the importance to the UK of mixed fishery issues, but my reading of Clause 6 is that we are focusing on a single stock-by-stock basis. However, a number of noble Lords have said that the current cause of overcatch is quota catch and excess bycatch. Does my noble friend not agree that the current drafting misses an opportunity to specify multi-species plans by area, with proposals for how to address mixed fisheries with quotas? If there is a reason for that, perhaps he will explain it. I understand that the Faroe Islanders have tried to control their fisheries through quotas, but it has not gone entirely well.

Clause 6(2)(c) seeks to use indicators, but the objectives do not refer to the precautionary criteria, which is why I would like to take this opportunity to stress that those criteria are important to the drafting of fisheries management plans. The reason is twofold. One is, as my noble friend has stated, that we need the scientific evidence to be specific and required to do much more than just assessing maximum sustainable yield and to work within the context of the fisheries management plan. The science will need to be sufficient to monitor the status against indicators and to inform with sufficient accuracy catch options required by the Secretary of State in order to set quotas. That, I presume, is the purpose of what a management plan should be: to identify this, not just the ability of assessing maximum sustainable yield. It goes to the Minister's earlier comments about why it is important to have the most accurate data and science available.

5.45 pm

Secondly, my Amendment 49A provides that, rather than concentrate as it does at the moment on sustainability objectives—to which we are all signed up, as we have said on both days in Committee—the plan should refer to consideration of the precautionary objective as set out in Clause 1(3). By excluding that, I am not sure that we can achieve maximum sustainable yield. In my humble submission, if you look only at maximum sustainable yield, you actually reduce the potential to achieve that maximum sustainable yield. I would like a phrase about the precautionary requirement to be inserted here in the clause related to fisheries management plans, because that should help the Government to achieve what it would be. That is the purpose of Amendment 49A: just to introduce a precautionary approach there.

Baroness Young of Old Scone: My Lords, I speak to my Amendments 45, 49, 50, 53, 54 and 55, all of which are aimed at making a good thing better. We agree that fisheries management plans are a good thing, but they are a bit of a moveable feast as currently structured in this Bill. They are optional; there are a range of circumstances in which authorities can simply opt out of plans and out of the joint statements placed around the plans. These amendments focus on the need for plans to be obligatory—to have timescales associated with them and to have more teeth if they are to deliver in practice the Government's manifesto commitment to introduce a legal commitment to fish sustainably.

These amendments are aimed at plugging a number of gaps that could mean that the authorities could opt out of preparing fisheries plans at all for some stocks. These amendments taken together introduce provisions to ensure that fisheries management plans must be introduced for all commercially exploited stocks and any other stocks that fall below sustainable levels. They also introduce timeframes for preparing and publishing fisheries management plans. The Bill says that authorities are to prepare a statement explaining the use that

"the authorities … propose to make of fisheries management plans"

and what fisheries management plans they

"propose to prepare and publish",

together with their reasons for deciding not to introduce a fisheries management plan for a particular stock. There is a rather perverse phraseology in the Bill, which seems to imply that finding an excuse for not having a fisheries management plan is pretty legit. We need to turn it around and set out a very clear requirement for a fisheries management plan to be prepared in the circumstances that I just described. Indeed, with the way the Bill is drafted, we could have a situation where a stock in a depleted state would not be subject to a fisheries management plan. That seems perverse.

I go back to a point that has been made several times—that what we are trying to achieve with the Bill is effectiveness, because ineffective fisheries management plans, for example, would be bad for fish stocks, and that would be bad for the fishing industry as well as bad for the fish.

To take my amendments in turn, Amendment 45 would remove the discretion over whether authorities have to produce a plan. Instead, it states that

"authorities must prepare and publish fisheries management plans for all commercially exploited stocks … and … other stocks … that fall below"

sustainable levels. It is absolutely vital to introduce this accountability into the Bill. Far too many of our stocks are still overfished through setting fishing limits above sustainable levels year on year. It is vital that the Bill reverse that through the introduction of effective fishery plans for all stocks currently below sustainable levels. It is also important that we have plans for all commercially exploited stocks, even if they are currently

[Baroness Young of Old Scone]
fished at sustainable levels. Those plans need to be in place to ensure stock levels remain at or above sustainable levels.

Amendment 49 would ensure that fisheries management plans actually maintain stocks at or restore them to the sustainable level, rather than merely "contributing" to the stocks' restoration. Amendment 50 would ensure that authorities are required to establish policies that will return data-deficient stocks to an equivalent proxy of maximum sustainable yield, rather than just having a vague commitment to increase stock levels without specifying any limit.

Amendment 53 would introduce additional requirements for fisheries management plans introduced for stocks that fall below sustainable levels, defined as BLIM. In particular, it would introduce timelines for restoring stocks that have not been fished sustainably. It would introduce catch limits and conservation measures to increase or return the biomass of each stock to sustainable levels within 10 years. It would also require authorities to prepare and publish a fisheries management plan within 12 months of a stock falling below sustainable levels.

If we do not introduce timelines for recovering stocks we could see many more stocks depleted, possibly beyond levels from which they can recover. The Minister talked about 59% of our stocks being fished at sustainable levels, but that figure is actually going down rather than up: in 2018, 69% of our stocks were being fished at or below sustainable levels. We still have a long way to go, so it is important that these timelines are included so that authorities can be held to account if they do not achieve them. It would be bizarre to abandon the common fisheries policy's target, which requires all stocks to be fished at or below MSY by 2020. I know that it is unfashionable to hark back to the common fisheries policy, but it was right to have that clear target. In a wider ecosystem context, the marine strategy review found that we were failing 11 out of 15 marine indicators, one of which was fishing.

Amendment 54 would ensure that where stocks are shared with another coastal state, the Secretary of State must engage with that state to try to put in place a joint fisheries management plan for shared stocks. This is pretty key, given that the UK shares more than 100 stocks with the European Union alone.

Amendment 55 would simply define BLIM as the reference point at which additional measures need to be introduced to fisheries management plans to ensure stocks are returned to sustainable levels. If fish stocks fall below this level, their ability to reproduce might be reduced and stocks might be in serious danger of collapse. This is the measure used by the International Council for the Exploration of the Sea, which provides annual scientific advice on and assessment of the state of fish stocks used by authorities when making decisions about catch limits.

I know the Minister will tell me that there will be guidance on fisheries management plans, but many of these issues are so important that they should be in the Bill rather than simply in guidance. Although the flexibility that the Bill currently allows on fisheries management plans might be admirable in some respects, it raises another question about the whole issue of consistency. If our fisheries and access to them becomes a material matter in negotiations with the European Union and other states on a variety of trade and international relations issues, the fact that we could be widely—perhaps even wildly—divergent across the four nations must raise interesting questions for the Secretary of State.

Baroness Bakewell of Hardington Mandeville: My Lords, I will speak briefly to Amendment 34 and other amendments in this group that relate to sustainable fish levels being included in the fisheries management plans. As the noble Baroness, Lady Jones of Moulsecoomb, said, we are going around in circles—perhaps like some fish.

Fisheries management plans are key to the Bill's implementation and success, but they will be ineffective if fish stocks are not maintained at or above sustainable levels. The Bill's thrust is to promote sustainable fisheries management—that is how I have interpreted it, anyway. This aim in endorsed and welcomed by the National Federation of Fishermen's Organisations. The UK is already well ahead in sustainable fisheries management and has much to build on to become a world leader. For the fishing industry to maintain its current position and go from strength to strength, it is vital that fish stocks are preserved, enhanced and sustainable. It would be unacceptable to promote short-term gain at the expense of fish stocks for future generations.

Decisions on fisheries management must be informed by science, data and information gathering. We welcome the Government's commitment to ensuring this happens and to an "ecosystem-based approach" to fisheries. This should minimise any harmful effects on fishing activities within the broader environmental, social and economic context. It is therefore essential to manage fish stocks, not only to maintain them at a sustainable level, but to go beyond that. As is clear, climate change can have a dramatic effect on water levels and temperatures. It is paramount that fish stocks are truly sustainable and can adapt to changes over time. It is incumbent on us all to ensure that this happens.

Baroness Ritchie of Downpatrick: My Lords, I will speak briefly on Amendment 54, which is to do with shared stocks. The UK Government share the Irish Sea with the Irish Government. An agreement is already in place in legislation called the voisinage agreement, which is like a shared fisheries management plan. I am seeking reassurance that that will remain in place and that the alleged regulatory border in the Irish Sea, as a result of EU management issues, will not impact on fishing efforts in the Irish Sea.

Lord Krebs: My Lords, I will speak very briefly to Amendment 33, tabled by the noble Baroness, Lady Jones of Moulsecoomb. I have to confess that it raised in my mind a thought I had not had before, and I thank her very much for it. Her amendment reflects the fact that in certain circumstances, the removal of one species from an ecological community can have a dramatic effect on the whole ecosystem. I used to teach this notion to undergraduates in Oxford. It refers in particular to the idea of a keystone species—one that might have a disproportionate effect on the balance of an ecological

community as a whole. In a quite unanticipated way, fishing effort on a particular target species might disrupt and radically transform the whole ecosystem. The noble Baroness's amendment suggests that the ecosystem objective should be built into consideration of fishing effort. Of course, we saw the ecosystem objective at the very beginning of Clause 1, which is one of the objectives that form the pillars of the Bill. Does the Minister or his officials have a clear view about the notion of keystone species and unintended disruptions to the whole marine ecosystem that might arise as a consequence of a fishing effort targeted at a particular species?

Lord Cameron of Dillington: My Lords, I put my name to Amendment 34. It is obvious that setting quotas at MSY is a largely short-term approach. I realise that it is incredibly complicated, particularly for mixed fisheries—the noble Lord, Lord Krebs, just introduced me to a new complication—but the point is that MSY tends to be set to allow for some harvest or return from whatever level the stocks reached, unless, of course, the scientists think that they are getting close to the point of no return or BLIM. Many conservation biologists think that MSY is dangerous and can be misused. If possible, stocks should be set above sustainable levels, so that we are not always living from hand to mouth and our children's children have a truly sustainable fishing future ahead of them.

6 pm

Baroness Worthington: My Lords, I rise briefly to support Amendment 34. As has been said, it is crucial that there is something on the face of this Bill making clear our serious intention to allow our stocks to recover. I fear that with all ecological assessments there is a danger that we become immune, that the steady decline becomes the new normal as we become more and more used to empty seas, the lack of birds in our hedgerows and the lack of wildlife in general, and that we simply adjust down our expectations to this new normal. We simply cannot do that.

The wonderful thing about fisheries is that if you take the pressure off them, they rebound. Fish are one of the most resilient of wildlife species. We must allow ourselves to take that pressure off. We have had decades of overfishing, and, as the noble Baroness, Lady Young, pointed out, we saw a 10% decrease in one year in the number of stocks that are at sustainable levels. That tells us that there is something deeply wrong. It is fine to say that 59% of stocks are better than they were a decade ago, but that is 10% fewer than the year before. So we must give ourselves the opportunity. We do not want to be subject to legal challenge. If we believe that we must take a management approach that will set stocks at well below the sustainable limit, we must be allowed to do so. They can then recover quickly and everyone can benefit, including the fishers.

Lord Teverson: My Lords, I was going to speak further to Amendment 34, but the noble Baroness and the noble Lord have said it far better, so I shall resume my place.

Baroness Jones of Whitchurch: My Lords, I am speaking to Amendment 48 in my name, but I also echo the arguments made by other noble Lords. Our amendment seeks to achieve a very similar objective to many others in the group: to maintain stocks of sea fish at or above sustainable levels. We are all, in our different ways, seeking to clarify and firm up the wording which would achieve that. As with some of the other debates, we believe that this is a core principle that should lie at the heart of the Bill.

The objectives set out at the front of the Bill emphasise the importance of sustainability, but this means nothing unless we use the Bill to tackle the scourge of overfishing and bring fish stocks back up to sustainable levels. Of course, as we have discussed before, we recognise that this is not just a UK problem but a global problem. Globally, 29% of stocks are overfished, many of them illegally, or they are unregulated. The Blue Marine Foundation has said that, if these trends continue, the world's seafoods will collapse by 2048.

This is an opportunity for us to play a leading role globally in addressing this crisis. However, we will only have respect and influence if we are seen to be putting our own house in order. Coming out of the common fisheries policy is an ideal time for us to show leadership on this. Taking more control of UK waters provides a rare opportunity to revisit the scientific data, make a baseline stock assessment, create space for stocks to replenish and reset the dial on how much fishing should be allowed to achieve long-term sustainability. That is why we want to see a requirement not to fish above sustainability levels as a guiding principle running through this Bill.

This should apply equally to UK fishers and foreign vessels given a licence to fish in our waters. Amendment 48 would require fisheries management plans not just to contribute to the restoration of stock levels up to sustainable levels but to go further, by restoring the stock and creating a long-term reserve, so that we can begin to repair the damage that has already been done.

Of course, we recognise that much of the fishing allocation around our shores will continue to be determined through negotiation with our European neighbours, but they have already signed up to the principle of maximum sustainable yield through the common fisheries policy, so they cannot really object if we take a more robust stand on this issue than the negotiations around the CFP have so far delivered.

As we have discussed, we will in due course have new opportunities to fish in UK waters, and this is an area where we could make the most progress. This will be under our direct control, so the benefits can be shared between the recovering fish stocks and the UK fishers who understand that it is in their interest to let those stocks regenerate.

I hope that the Minister will recognise the sense of these arguments and seek ways to incorporate the principles into the Bill.

Lord Gardiner of Kimble: My Lords, I am most grateful to all noble Lords who have contributed to this very interesting debate relating to the Bill's new provisions for the UK Government and, where appropriate, the devolved Administrations, to publish fisheries management plans. These plans will set out the action that we will take to get stocks to sustainable levels. Where we cannot make such an assessment, we will gather scientific data so that such an assessment is possible.

[Lord Gardiner of Kimble]

The noble Baroness, Lady Jones of Moulsecoomb, knows how fond I am of her. The sustainability objective is the first objective of this Bill. I am starting to take exception to the questioning of the bona fides of the Government, who have worked with the devolved Administrations to bring this forward. This Bill is absolutely predicated on sustainable fishing for the future, and we will not be doing our fishing community any good if we overfish and do not have good custodianship of our waters. That is the whole basis of this work, and the legally binding nature of the statement and the fisheries plan. When I hear noble Lords talking as if this Government were being negligent about sustainability and the importance of sustainability to the whole basis of this work, I will go round in circles and re-explain why these objectives are part of a balance which we have agreed with the devolved Administrations.

I am most grateful to the noble Baroness, Lady Jones of Moulsecoomb, for tabling Amendment 33. I recognise her clear intention to ensure that fisheries management plans make a vital contribution to enhancing the protection of the marine environment. I firmly believe that the clauses as drafted in this Bill will support a holistic, ecosystem-based approach to fisheries management. I hope that the noble Baroness, Lady Bakewell, will not be embarrassed by me highlighting what she said: that this country is well ahead. It is recognised as one of the leaders. Obviously, we want to be doing even better than everyone else, but it is important to reflect on the bona fides of all Administrations to get this right and to have a vibrant fishing fleet.

The joint fisheries statement requires the Administrations to explain how fisheries management plans will contribute to the fisheries objectives, including the ecosystem objective. The four fisheries administrations are also bound by our wider body of marine legislation, including the provisions in the Marine Strategy Regulations, the Conservation of Habitats and Species Regulations and the Marine and Coastal Access Act. The fisheries management plans will make an appropriate contribution to delivering these broader obligations, and I am confident that these plans will deliver the environmental improvement that the noble Baroness, and all noble Lords, are rightly seeking.

In relation to Amendments 34 and 48, the clause already requires fisheries administrations to set out policies to manage stocks in such a way as to restore them and grow them over time. I agree that in some circumstances it may be necessary or desirable to fish some stocks below maximum sustainable yield for conservation purposes. This could be to ensure that all stocks in a mixed fishery can be managed sustainably, for instance. The clause already allows this. To refer specifically to the second part of the amendment tabled by the noble Baroness, we already have spatial measures to protect key areas of the sea to allow recovery, and fishing stocks at levels no greater than their maximum sustainable level will, by default, leave a proportion of the stock to allow regeneration. The UK Government are also committed to supporting our fishers. It is therefore important that fishing activities are managed to achieve economic, social and employment benefits, as well as contributing to the availability of food supplies.

The noble Baroness, Lady Young of Old Scone, tabled a series of important amendments on the topic of the health of stocks, measured by BLIM. This is the scientific term for the limit reference point for all the mature fish in a particular stock. Amendment 55 from the noble Baroness would add a definition of BLIM to the Bill. This amendment cannot be considered in isolation as it links with other amendments that aim to introduce provisions to manage stocks to levels above BLIM elsewhere in the Bill—so I will address it first.

The proposed definition of BLIM—I have to say that I am not an expert on this, so this is what I am advised—is not the same as that used by the International Council for the Exploration of the Seas, ICES, the body which provides scientific advice on many of the fish stocks in the North Atlantic. ICES defines BLIM as:

> "A deterministic biomass limit below which a stock is considered to have reduced reproductive capacity."

Introducing a different definition in law could inadvertently create issues with interpreting and applying ICES's advice in future. I am very happy to have a discussion with the noble Baroness, if that would help, because I am afraid it is out of my area of expertise and it might be interesting.

Returning to Amendment 45, there are many factors that can affect the biomass of a fish stock, and fisheries management plans will have to take them into account. Commercial fishing is by no means the only pressure on fish-stock biomass, although I acknowledge that it often is the most significant. Of course, a priority of the fisheries administrations will be to recover fish stocks to healthy levels of biomass, and this will be a key purpose of fisheries management plans. Fisheries administrations will produce fisheries management plans irrespective of whether the stock is overfished, because stocks currently fished at sustainable levels must also be managed attentively to ensure that they maintain their biomass status.

This amendment would restrict authorities to creating fisheries management plans only for commercially exploited stocks and those below BLIM, which would not be the best outcome for all stocks found in UK waters. This amendment may also inadvertently mean that we would be unable to manage some stocks. For instance, there are data-poor stocks where it is not possible to set a BLIM level. This includes certain stocks of lemon sole, ray, dogfish and boarfish. The Bill's objectives already seek to provide that the health of stocks is restored and maintained and, in particular, the stocks below BLIM would be covered by the precautionary objective. This means that the amendment is not required to achieve its desired purpose and would instead create an inappropriate restriction in the remit of authorities to create fisheries management plans.

Amendments 49 and 49A allow me to set out the important matter of how policies support the achievement of the objectives. The clause in question places a duty on fisheries authorities to set up policies to restore and maintain a stock to sustainable levels, or contribute to these aims, when there is sufficient scientific evidence to do so. These amendments would delete the section on contributing to these aims, which would mean that

the policies would have to restore or maintain a stock immediately to sustainable levels, which may not be possible. Furthermore, Amendment 49A adds an unnecessary requirement to meet unspecified criteria on taking a precautionary approach, as plans will already have to be compatible with the precautionary approach.

I say also to my noble friend Lady McIntosh that fisheries management plans can include details of the type of stock, the type of fishing and the geographical area to which they relate. Each plan could therefore cover multiple stocks in a geographical area. Clause 2(5) makes it clear that fisheries management plans set out policies for "one or more stocks". I assure the noble Baroness that the wording on "contributing" does not remove the duty for authorities to restore and protect stocks.

To give an example of a policy that would contribute to a stock's sustainability, if a fisheries management plan covers a fishery that targets only part of a stock, the policies set out within that plan cannot achieve sustainability for the whole stock. The devolution settlement allows for the different fisheries administrations in the UK to produce their own plans that contribute to a stock's management, and the clause reflects this. The proposed amendments would run contrary to the devolution settlement. The same applies for stocks shared with other countries, where our policies, no matter how effective, can go only so far as to contribute to the restoration or protection of stocks.

6.15 pm

The noble Baroness's Amendment 50 would require the plans to specify an alternative measure of the limit of sustainable harvesting of a stock when an MSY is not available. I fully support the intent to implement robust measures to recover and maintain stocks to sustainable levels. However, there are concerns that the amendment could inadvertently—I know it is not the intention—undermine this effort.

The UK Government remain fully committed to sustainable fishing, using the principle of setting an MSY where possible. We recognise that there is insufficient data to conduct an MSY assessment for many stocks, so we use other measures where possible, such as effort limits, to ensure that stocks are fished sustainably. These provisions recognise our state of knowledge on stocks by requiring fisheries authorities to address data deficiencies while still setting policies that follow a precautionary approach to maintain or increase levels of stocks.

The plans will specify indicators to demonstrate the effectiveness of the plan and, by implication, the success of policies to manage data-deficient stocks in a sustainable manner. The amendment will require fisheries authorities to specify a proxy measure, regardless of whether there is scientific information on what an appropriate measure would be. Authorities could be forced to use measures that could be ineffective and give false positive information on the status of a stock. Again, I am very happy to have a further and more technical discussion on some of these matters. Our proposed approach of using precautionary management, while endeavouring to collect enough information to identify the appropriate measure for a sustainable harvest, is preferable to risking the use of unverified measures.

I support the intention underpinning the noble Baroness's Amendment 53. However, the amendment as drafted would make the fisheries administrations legally accountable for achieving targets which are not within their gift to deliver. The reproductive success and recruitment of juveniles to wild fish populations is beyond our control. Environmental and ecological factors control natural populations and despite the best endeavours of our fisheries managers in all four administrations, we cannot guarantee that a population will increase by a minimum of 20% per year.

Similarly, we could limit harvest control rates over a 10-year period, but environmental factors could still limit population growth such that a stock would not reach an MSY level. We saw this scenario with cod stocks on the Grand Banks off Newfoundland. This could force the fisheries administrations to set very low or even zero harvest rates for a stock to achieve the fixed limits in the amendment. While in some circumstances this may be appropriate, noble Lords will be aware that setting a zero harvest rate would close any mixed fishery where fishermen could not avoid catching a species. Such action would have a significant social and economic impact and undermine the social and environmental pillars of sustainability, which are crucial to ensuring the success of sustainable fisheries management.

Our view is that we cannot unilaterally impose fixed limits for stock recovery for stocks that we share with other coastal states. Although the UK can, and does, encourage sustainable fishing by other coastal states, we cannot control how another coastal state manages the stock in its waters; nor can we control how and where the fish swim between the borders. Setting fixed limits in law would constrain the UK within international negotiations and would allow those with whom we are negotiating to take advantage of the UK's legal position. Ultimately, the UK being bound by a legal limit would not mean that other coastal states would be, and ultimately stocks might see no benefit. Although I know that the amendment is well intentioned, we believe that it is impractical to set deadlines for stock recovery in statute.

The joint fisheries statement will set out the list of proposed fisheries management plans and these will be subject to consultation and scrutiny. There is further provision to add plans later when we have a better understanding of the science, particularly on what constitutes sustainable levels. It is important to note that ICES does not yet have the data to produce accurate MSY or BLIM values for all commercial stocks, let alone non-commercial stocks.

On Amendment 54 and the point about international obligations, as I have said, as a party to the UN fish stocks agreement, the UK is committed to working with other coastal states to manage shared stocks fairly and sustainably, and to take a precautionary approach to their management. This means that we are committed to taking appropriate action when the science indicates that stock health is failing; for example, if the biomass falls below a precautionary reference point such as BLIM or a similar proxy measure.

As an independent coastal state, we are already giving effect to that commitment by joining regional fisheries management organisations and developing

[Lord Gardiner of Kimble]
new agreements with our neighbours in the north-east Atlantic, providing frameworks for co-operation to manage shared stocks. In turn, that will enable us to work together with other coastal states: first, to commission scientific advice on the health of shared stocks and appropriate management options; and, secondly, to use that advice to put in place plans for stocks that allow us to respond effectively to changes in the health of those stocks.

Any agreement on fisheries management with another country would have the status of an international agreement rather than a fisheries management plan. They might look very similar but it is important to say that. Fisheries management plans are intended to set specific plans for managing fishing activity wholly within UK waters. Although fisheries management plans could be used as a vehicle for implementing internationally agreed approaches to stock management in UK waters, they could also contain UK-specific measures on issues such as the wider conservation of the ecosystem. They might reflect specific social and economic objectives linked to a particular fishery. Therefore, in our view it would be inappropriate to seek to agree these plans internationally. The UK could enter into higher-level regional fisheries management plans through international agreements.

In addition, we believe that the amendment would restrict the ability of the devolved Administrations to introduce measures within areas of devolved competence. Individual fisheries administrations may produce fisheries management plans. The amendment blurs the distinction between reserved and devolved matters. Agreeing the UK's fishing opportunities internationally is a reserved matter for the Secretary of State. Implementing international obligations and developing fisheries management plans, where they relate to devolved competence, are devolved matters.

The noble Baroness, Lady Ritchie of Downpatrick, asked about the voisinage agreement. The UK Government remain committed to that agreement and to protecting and supporting continued co-operation between Northern Ireland and the Republic of Ireland. The voisinage agreement exists outside the CFP, so we very much endorse that. It is a long-standing bilateral arrangement between Ireland and Northern Ireland that can in principle continue in the future, and we would welcome that.

Article 5(3) of the Northern Ireland protocol makes provision for fishery and aquaculture products landed at EU ports by Northern Ireland-registered vessels flying the flag of the United Kingdom to be exempted from duties. No tariffs will apply to these vessels landing their catches in ports across the rest of the United Kingdom.

The noble Lord, Lord Krebs, asked about the importance of keystone species to food webs. The importance of food webs is recognised in the definition of "good environmental status" under the UK marine strategy. There is ongoing work to look at the structure of food webs and how fisheries management will support healthy systems.

I started off by looking at the noble Baroness, Lady Jones of Moulsecoomb, rather too fiercely but I hope that that rather detailed explanation has reassured her. In that explanation, I do not think that anyone could have interpreted a government Minister as saying anything other than that environmental enhancement of the ecosystem of fish stocks is of enormous importance within this whole scenario.

This is not the beginning of a promise of something further but if the mood in the Committee is that it would be helpful to talk through the fisheries management plans around a table—perhaps, after checking our diaries, once we have finished the Committee stage—so that everyone can see the bona fides of what we are seeking to do, I shall of course be prepared to do that. We will come on to this but this is not about us finding loopholes; it is about having a statement and management plans which will go out for consultation and receive parliamentary scrutiny. Wherever we all are, these are areas that we will return to constantly. However, for the moment, I very much hope that the noble Baroness will withdraw her amendment.

Baroness Young of Old Scone: I thank the Minister for his offer to meet to talk about management plans, and I would very much like to take that up. Perhaps before that meeting he might ponder on whether something can be inserted into the Bill. I am trying to be kind here and am choosing my words very carefully. I absolutely do not doubt his commitment, at a UK level, to the intent of the Bill and to the sustainability issue being entirely at the forefront. However, devolution is quite a long arm and I suspect that there will be occasions when one or more of the devolved fishing authorities have other priorities in mind. I would be searching for something much more specific about what fisheries management plans there need to be. The provisions of Clause 7 allow a little bit of coming and going at a devolved level and could mean that very significant stocks do not have plans applied to them. I would very much like to explore the ability to plug that hole.

Lord Gardiner of Kimble: We might perhaps incorporate that if there is a more general desire to talk through fisheries plans. The truth is that the four fisheries administrations have worked very constructively and positively, with sustainability at the heart of that work. We have all been saying that there is no point in overextracting or overexploiting fish stocks anywhere in UK waters. We need to work on restoring all our stocks, and that is absolutely what these plans are designed to do. I shall of course be very happy to have further discussions on that.

Baroness Jones of Moulsecoomb: I thank all noble Lords who have spoken in this debate, almost all of whom probably have much more competence in this area than I do. I thank the noble Lord for his answer. He was quite fierce towards me—in fact, that is probably the grumpiest I have ever seen him—and I consider myself told off. I did not mean to doubt his integrity but I am afraid that I cannot say the same for the Prime Minister. It is very dispiriting to be on this side of the Chamber, to put a lot of work into legislation, to come forward with what we think are good suggestions to make it a better piece of legislation and then to have them all swept aside simply because the Government have a large majority. The Minister must see that that is quite difficult to swallow at times.

I thank the Minister for giving an answer that he felt to be very reassuring. I will read it to see how much I am reassured by it and, in view of that, I beg leave to withdraw the amendment.

Amendment 33 withdrawn.

Amendment 34 not moved.

6.30 pm

Amendment 35

Moved by ***Lord Teverson***

35: Clause 2, page 3, line 36, at end insert—

"( ) The fisheries policy authorities must whenever possible draw up fisheries management plans that are agreed with all those non-UK authorities that share those stocks."

Member's explanatory statement

This amendment requires management plans to take account of the fact that fish migrate across boundaries.

Lord Teverson: My Lords, I shall also speak to Amendment 46. I was surprised that the Minister seemed to give the impression that we were saying that the British fishing industry or this sector had a bad reputation, or that we were somehow denying that it was trying to obtain sustainability. I do not think that anybody in the Chamber has said that at all. However, that provides a good introduction to this amendment.

One of the things that the UK did, as part of the European Union, was to help reform the common fisheries policy quite successfully in all sorts of ways. The landing obligation was one of those reforms, which I am delighted the Government are still pursuing post Brexit, and so was the issue of regionalisation—an area of fisheries management that the UK always pursued in the Council of Ministers. In the last major reform of the common fisheries policy, we achieved regionalisation to a large degree.

Why did we do that? Why was that important? Well, as the noble Lord, Lord Krebs, referred to, a large proportion of our commercial, and indeed other, species are not confined to the UK EEZ. As he said, spawning grounds, for instance, are more likely and more often to be found elsewhere rather than in our exclusive economic zone. What that means—and this is stark-staringly obvious—is that we have to continue co-operation to manage these stocks because, if we do not, it will not work.

A key difficulty with this Bill for me is that, to a degree, it asks for three fictions—or three novels—in the form of the two documents on sustainable fisheries, which we will continue to talk about, and also, particularly, the fisheries management plans. I welcome the Minister's offer to talk about those, because I do not think the Bill is very clear about what these plans are trying to do. However, one thing that I am sure about is that the fisheries management plans need to take into account the total circulation of the fish, or other marine animals, in the areas that we are trying to manage. If we do not do that, the plans are a waste of time; they are just not going to work.

This amendment says that there has to be an obligation—of course, all our international obligations are general rather than specific, so they would not work sufficiently in terms of the detail that I would see in the management plans—to do our best, or a best endeavours obligation on the fishing authorities, to come to agreement with other non-UK authorities that are in charge of those fish stocks that are within that management plan, so that we have a holistic plan for the range of those stocks. I cannot think why we could not do that, but I do not believe that the international obligations are specific enough for there to be a need to do that at management plan level. There is a general obligation; it is not a specific obligation.

That is why my amendment proposes that fisheries authorities, in bringing those management plans together, have to try to reach agreement with other coastal states or member states of the European Union. It is not compulsory—clearly, agreement might not be reached—but, equally clearly, those others will want that same result. This will not be part of the Brexit negotiations, so it is not around high negotiation; it is around practical effect, once we are out of the common fisheries policy and we are into our future relation. There is not some great negotiation point here; it is a matter of trying to achieve all the goals in those objectives, all of which will be largely impossible to achieve if we do not have management plans that co-ordinate with those of adjacent coastal states.

That seems to me to be a complete and clear proposition—one that not just biologists but anyone who has been involved in this area would recognise—and I hope that the Minister will find a way of getting this aspect into the Bill. I say once again that, without this aspect, we are looking at a Bill that talks about management plans that become a fiction. I beg to move.

Lord Selkirk of Douglas (Con): My Lords, I wish to speak to Amendments 57 and 58, which were put down by my noble and learned friend Lord Mackay of Clashfern.

The premise I start from is that conservation and sustainability are essential if we want to conserve all kinds of fish for the good of our planet and as a legacy that we can be proud of for the future generations who will inhabit it. To achieve such success for the future, we need both clear, co-ordinated objectives and detailed management plans working in concert. The changes proposed will improve the coherence between the objectives contained in the detailed management plans. These plans will have to include an explanation of how the overarching objectives of sustainability and marine conservation have been interpreted and applied.

I ask the Minister to give more details on the operation of these new management plans and how they will co-exist alongside other co-management initiatives, which already exist in the industry. For example, the shellfish advisory group is engaged in such an arrangement, and this can be built upon.

We also believe that, within six months after the passing of this Bill, the Secretary of State should issue a consultation on the design and creation of these management plans. Can the Minister tell us a little more about the Government's long-term vision for the future of this very special industry?

[Lord Selkirk of Douglas]

On the remarks made by the noble Lord, Lord Teverson—who, if I may say so, was an excellent chairman of the EU Energy and Environment Sub-Committee, on which I was privileged to serve—I believe what he said is essentially right, in that every interest should look at this issue with a considerable sense of realism. In his speech, he pointed the way to a meeting of minds, which I believe and hope very much will come into existence. Surely, it should not be beyond the wit of humankind to come to a meeting of minds on this subject.

Lord Mackay of Clashfern: My Lord, perhaps it is as well that I should speak to my amendments, in view of the fact that my noble friend has done it already. These amendments are an attempt to deal with the point that the noble Lord, Lord Cameron of Dillington, referred to earlier.

Amendments 57 and 58 which I have put forward—my noble friend Lady McIntosh of Pickering has also signed up to the first one—would require the fisheries management plans to explain how they are implementing, or taking account of, the objectives in a way that we can understand. I think that that is a reasonable obligation. It is not a legal obligation in quite the sense that the noble Lord, Lord Cameron, was talking of in the earlier amendment, but I think that these objectives are intended to form part of the structure of the management plans. Therefore, the test is whether, on a proper examination of the management plans, we can see how these objectives have been implemented.

Amendment 58 would require the Secretary of State to set out procedures for arriving at these management plans, including consultation on how this should happen. He would then be able to go forward with a procedure which will implement the objectives within the management plan.

My other amendment in this group, Amendment 125A, would require the Secretary of State to make a statement about the economic benefits of this system to the United Kingdom in pursuance of the national benefits objective. Management under that objective requires social and economic benefits. I venture to think that it would be right for the Secretary of State to apply his mind in time, just at the end of the first year, to explain how he hopes to achieve economic benefits as a result of the arrangements made under this Bill for fishing in United Kingdom waters.

I strongly support what the noble Lord, Lord Teverson, said about the need for co-operation with other authorities that have responsibility for stocks which we share with them, for the obvious reason that, unless there is such co-operation, there is no real management of the whole stock. As the noble Lord said, it is absolute common sense to do that. It is not quite a matter for the negotiations over Brexit; it is about practical arrangements for ascertaining what is required in respect of these stocks.

Coming back to a point that the noble Lord, Lord Teverson, made earlier about equal access arrangements, as I understand the Bill, the equal access arrangements are about the actual movement of fishing boats. The quota system controls the catch. If one looks at what the Bill says about equal access, it is pretty plain that, for example, you are not tied to your home port; you can go somewhere else. If you think that there is a better bargain in Peterhead than in Grimsby, you can go there. Conversely, of course, if you fish in Scotland and think there is a better bargain in the south, you can go there, but you cannot drop your line to bring fish out of the water as you go through English waters if you do not have a quota for that. If you are licensed for Scotland, you have to exercise your quota rights there. That is the way that I have understood it. I may be completely wrong, but it looks to me as though that is the way the Bill is framed. That goes back to a previous discussion.

So far as my amendments are concerned, they are intended to incorporate the objectives into the plan in a way that anybody can reasonably understand. That obligation would be a practical obligation in respect of these objectives. We cannot expect any authority to implement all of them; it will depend a bit on the nature of the arrangements. Incorporating them in a way that is explicable and explained in the management plans is the way forward. I would like to know in due course what the Government think about these amendments.

Baroness Young of Old Scone: My Lords, I will speak to my Amendments 51 and 52, which are about data-deficient stocks. I was very pleased to hear the Minister say earlier that there is a real commitment to know more about stocks in order to improve them. Amendment 51 strengthens the drafting of the Bill to ensure that authorities "will" take steps to obtain the scientific advice and data necessary to enable an assessment of a stock's maximum sustainable yield. This would replace the rather loose drafting in the Bill at the moment, which says that authorities will specify the steps, "if any", that they propose to take. That seems to imply that they may choose to remain deficient in data. It would be an improvement to lay that stronger requirement.

6.45 pm

Amendment 52 would be consequential on Amendment 51. It would remove the wording

"where no such steps are proposed, state the reasons for that."

If there was a requirement to absolutely lay down a proposition as to how the data and evidence could be collected, there would be no need for a statement of reasons for doing nothing. We do not want the authorities to explain why they are doing nothing; we want them to explain how they are going to do something.

I also support Amendment 58 in the name of the noble and learned Lord, Lord Mackay of Clashfern. It would be great to have some of the changes that we want to fisheries management plans on the face of the Bill: but, if we cannot have that, guidance will be very important. Establishing that fairly swiftly, and consulting widely on it, would be extremely helpful.

Lord Grantchester: My Lords, I rise to speak to Amendments 61 and 71 in my name, as well as to speak in support of other amendments. I am grateful to the noble Lords, Lord Teverson and Lord Krebs, for adding their names to Amendment 61. While it adds merely one word to the Bill, it makes an important distinction that science and scientific evidence must be good and up to date.

At present, as my noble friend Lady Jones of Whitchurch will outline in relation to some later amendments, Clause 7 provides for fisheries management plans to be amended in the event of "relevant" changes in circumstances. These include changes to scientific evidence. Earlier in the Bill, there is a reference to drawing on the "best available" scientific evidence. The objective in question states that the management of fish and aquaculture activities should be based on this best evidence.

I am sure that the Clause 7 provisions do not intend to allow for any change in scientific evidence to be used as a justification for changing the ways in which fishing activities are managed. Peer review reports are a key aspect in coming to conclusions in scientific matters. Given that, sadly, we live in a world where a small minority of scientists still deny many aspects of the nature of climate change and other generally accepted problems, it seems curious that we should leave open the risk that a minority of scientific opinion could justify watering down important sustainability provisions. It is an important distinction to make sure that this safeguard is added in Clause 7.

Amendment 71 is a probing amendment relating to the issue of transitional provision as the UK becomes an independent coastal state. The amendment makes it clear that fisheries policy authorities must consult with one another in drawing up management plans. Clause 9 of the Bill makes it clear that interim fisheries management plans can be adopted prior to the full versions being published under Clause 2. This makes a great deal of sense in relation to authorities acting alone, which could lead to the adoption of contradictory —or, at least, not entirely complementary—interim measures. There should be some requirement for the policy authorities to discuss interim measures with each other. We need to be satisfied that joined-up policy-making remains a priority even during any transitional spells.

Of the other amendments in the group, Amendment 35, in the name of the noble Lord, Lord Teverson, supplemented by his Amendment 46, makes common sense in saying that international co-operation should be achieved, as far as possible, in management plans.

My noble friend Lady Young of Old Scone tabled Amendments 51 and 52, which seek to strengthen the emphasis on pursuing sustainability in policies and actions, especially with deficient stock, by seeking scientific evidence. It is important that such evidence must support management plans.

The noble and learned Lord, Lord Mackay of Clashfern, tabled Amendments 57 and 58, which would require management plans to include a statement setting out how the overarching objectives have been interpreted and applied, and consultation on the design of the plans themselves. Those two amendments probe the element of consultation that must be undertaken by the relevant authorities, and how far consultation on these arrangements needs specifying in the Bill. I might say that those requirements could be added in relation to many, if not all, of the other objectives to which management plans need to have regard.

I also thank the noble and learned Lord for tabling Amendment 125A, which would introduce a requirement for the Secretary of State to provide more information on the realisation of economic benefits stemming from the new fisheries approach. The extra information that he requires could only help achieve greater degrees of success.

All these amendments raise valid points, and there is a common theme: we do not know nearly enough about the Government's plans at this stage, which should be a concern to all noble Lords. At this point I thank the Minister for his offer to explore the workings of management plans in greater detail before Report. That would be very productive.

Lord Gardiner of Kimble: I thank all noble Lords who have tabled amendments in this group. Amendments 35 and 46, tabled by the noble Lord, Lord Teverson, address our engagement with other coastal states in relation to fisheries management plans. As noble Lords know—we are going around in circles a bit—many of the fish stocks that are important to the UK industry are shared with our regional neighbours, inhabiting both UK and non-UK waters.

I fully support the intention behind the amendment, which is to ensure that we co-operate closely with our regional neighbours in the management of those shared stocks to ensure their sustainable management. Indeed, as I have said before, as a responsible independent coastal state, we of course seek to do that, both as members of the relevant regional fisheries management organisations and in line with our international obligations under UNCLOS. Indeed, we will seek international agreement on the management of shared stocks, and fisheries management plans could be a vehicle for delivering some aspects of those agreements in UK waters. But fisheries management plans are not just about agreeing quota; they are about managing the wider ecosystem impacts of fishing.

I am advised that the amendment is incompatible with the devolution settlements. In respecting the fact that most fisheries management is devolved, the Bill provides that individual fisheries administrations may produce fisheries management plans. However, as noble Lords know, and as I have said before, international negotiations are a reserved matter. Therefore, in practice, if this amendment were to become law it could restrict the devolved Administrations from implementing management measures in their own waters pending any international agreement, which would necessarily be led by the UK Government.

The UK is committed to continuing co-operation with other coastal states for the sustainable management of shared stocks. Were we to enter into joint regional arrangements for shared stocks, these would be set out in international agreements—although, as I have highlighted, any management aspects relating to the stocks that swim in our waters could be implemented through the fisheries management plans.

Amendments 51 and 52 are designed to ensure that all stocks within the fisheries management plans have an assessment to make sure that harvest rates are set to restore or maintain populations of harvested species above the biomass levels capable of producing maximum sustainable yield. I agree that it is important to have

[Lord Gardiner of Kimble]
the best available scientific advice to support fisheries management, and this ambition is reflected in the Bill, principally through the scientific evidence objective. However, the Bill specifies that in cases where an assessment of a stock's MSY cannot be made, steps are taken to obtain the necessary scientific evidence for that to be done.

For some stocks, it is not possible or appropriate to conduct assessments of their MSY. For example, this can be due to stocks such as bycatch or conservation species not being caught in large enough quantities, so that there is insufficient data. Clause 6(3)(b)(iii) contains the important provision that in such circumstances, the fisheries policy authorities must explain their reasoning as to why they are not setting out steps to understand the maximum sustainable yield of the stock. This, I hope, will provide noble Lords with the certainty that they will understand the reasoning if and when, in narrow cases, some stocks in a fisheries management plan do not have such steps set out.

Amendment 57 would include a requirement to state explicitly how each fisheries management plan's policies link to the fisheries objectives. I recognise my noble and learned friend's clear intention to ensure that there is a direct link in the Bill between the fisheries management plans and the fisheries objectives. My noble friend Lord Selkirk also made that point, and asked me what the Government's desire through all this was. It is to have sustainable fisheries with vibrant and successful ecosystems, and a harvest that provides an important food source. However, the joint fisheries statement is already required to explain how fisheries management plans will contribute to all the fisheries objectives.

The plans themselves must be consistent with the joint fisheries statement and must, in accordance with the sustainability objective, set out how they will maintain stocks at sustainable levels. They must also set out how they will obtain new scientific evidence, which will meet the scientific evidence objective; and how they will take a precautionary approach, which links to the precautionary objective.

My noble friend Lord Selkirk also asked about shellfish. Shellfish can and will be covered by fisheries management plans. The newly formed Shellfish Industry Advisory Group is looking to create specific plans, and the scallop industry consultation group is looking at what could be considered in plans too.

The Government believe that the existing provisions for the joint fisheries statement and fisheries management plans, taken together, will clearly demonstrate how our future fisheries management regime will be underpinned by the fisheries objectives.

Amendment 58 gives me the opportunity to set out the process of consultation already provided for in the Bill; we will explore it in more detail later. I support the principle of requiring consultation on the design and implementation of fisheries management plans. The Bill sets out in Clause 3 and Schedule 1 the process for statutory consultation on the joint fisheries statement. The statement will also be subject to parliamentary scrutiny before it is adopted. It will include a list of the proposed fisheries management plans and will necessarily set out general principles around how fisheries management plans will be developed.

The Bill also requires consultation on the fisheries management plans themselves. Part 3 of Schedule 1 is clear that the relevant authority or authorities must bring the consultation draft to the attention of "interested persons". In addition, we want to learn lessons from other parts of the world and ensure that our plans are appropriate for our circumstances and fisheries. We may therefore trial different types of plans or have plans that nest inside others. Fisheries management is well known for bringing unintended consequences, and we need to be able to adapt, learn and build as we go. We believe that a one-size-fits-all process for the production of plans would therefore not be suitable, for the reasons I have outlined. I assure noble Lords that we intend that the whole process of developing the plans, including their design, be carried out openly and collaboratively.

I am grateful for the noble Lord's Amendment 61, on clarifying the evidence used in fisheries management plans. I appreciate the importance of making decisions on the basis of the "best" science. I also appreciate the advantages of consistent terminology, as we want to ensure that the Bill's purpose and ambitions are clear. However, the fisheries objectives already refer to the need to manage fisheries on the basis of the best available science. I am advised that including a reference to "best" science in the provision on fisheries management plans is therefore not needed.

7 pm

Amendment 71 would add further requirements to the consultation arrangements for fisheries management plans published prior to the adoption of the joint fisheries statement. I make it clear that I fully support the noble Lord's aim of ensuring that any early fisheries management plans are sufficiently consulted upon, ensuring not least that other fisheries policy authorities have the opportunity to contribute.

However, Clause 8 and Part 3 of Schedule 1 set out the procedure for preparing, consulting on and publishing fisheries management plans. These provisions require an authority or authorities publishing a plan to consult with "interested persons" and then have regard to any representations they receive. These provisions will apply to any plans prepared under the transitional arrangements in Clause 9.

On a technical note, as currently drafted the amendment would apply only to a fisheries policy authority acting alone. However, there may be circumstances where some UK fisheries administrations produce a plan that others are not party to. In those circumstances, we would still expect the other administrations to be consulted in line with the procedures set out in Clause 8 and Schedule 1.

I turn to Amendment 125A from my noble and learned friend Lord Mackay of Clashfern. As I have described previously, economic considerations are covered in the objectives in Clause 1, which requires that fish and aquaculture activities are managed so as to achieve economic, social and employment benefits. I therefore reassure my noble and learned friend that measures for obtaining such benefits will be included in the joint fisheries statement. I recognise that he may have

deliberately chosen the date in the amendment as 1 January 2021 in anticipation of the end of the transition period. However, it is not clear how in practice this clause would sit with all the other considerations in the objectives set out in Clause 1, and it would place economic benefits outside the joint fisheries statement, which would be less transparent.

To achieve true sustainable fisheries, it is important that a balance exists between all of the objectives set out in Clause 1, and we believe that it would be inappropriate to bring forward statements on the economic benefits early. Developing a hierarchy within the objectives would be inappropriate since it could undermine this approach. Furthermore, while the amendment refers only to the Secretary of State's responsibilities, the purpose of the joint fisheries statement framework is to help to develop a UK-wide framework through co-operation across all four fisheries administrations. We believe that the amendment would run contrary to that aspiration.

I am grateful for all the amendments tabled and points raised during the debate on this group. Again, I hope I have spoken in enough detail, but if there are any residual points of detail that noble Lords would like to raise after Committee or thereafter, I would be very happy to discuss them further. I hope that in many of the cases that have been raised I have been able to highlight that there are already provisions catering for them in the Bill. Again, at the international level these are subject to our international obligations, and we will be working through them. At this stage I respectfully ask the noble Lord, Lord Teverson, to withdraw his amendment.

Lord Teverson: I thank the Minister for what I think was a very constructive reply. I could see the noble Lord, Lord Grantchester, almost thinking that the Minister was going to concede one amendment—but then it was taken away. What a disappointment, but there we are. Of all the amendments, the one tabled by the noble and learned Lord, Lord Mackay of Clashfern, which would put how the objectives have been met in the fisheries management plan, seems to be totally obvious and, while not a substitute for what the noble Lord, Lord Cameron, wishes to do, something that would really tie that down. The statements are too high a level to do that; it needs to be done at the level that the noble and learned Lord suggests.

I have one question for the Minister before I—probably—withdraw my amendment. We leave the common fisheries policy on 31 December this year; it will all go and we will have a clean sheet. When does he expect the first of these management plans to be in place, and what will happen in between?

Lord Gardiner of Kimble: I think I will write to the noble Lord on that precise issue. As I have said, there are some existing plans, as well as work that we are already undertaking. The whole purpose of this is to take those management plans even further. That is why we need to get this framework Bill through, and then we can work on the plans. I could not give the noble Lord a precise date and I am not going to make one up. Obviously a lot of work is being undertaken and we will need to work with the devolved Administrations and interested parties.

As I said in relation to the consultation following Royal Assent, there are provisions here with the affirmative statutory instruments, which will be part of the aftermath of this where we will have consideration. This is work that we need to advance very quickly. I am not in a position to give a precise date—the noble Lord would probably think it unwise if I did so—but this is work that absolutely has to be advanced because, yes, our aspirations for sustainable fisheries apply now and on 1 January and thereafter.

Lord Teverson: I will not press the Minister any more on that, but I think all of us, and maybe the industry itself, would have a concern if there was a blank sheet between when we leave the current regulatory regime and when these plans arrive. I will wait for him to write on that.

I look forward to meeting the Minister, along with others, to understand the management plans more. However, I say yet again that the science has to be the best, and I am glad that that is accepted in principle. We have to find a way to integrate co-operation and co-planning with our adjacent coastal states with our fisheries management plans. We just have to do that; we cannot do it any other way. The debate that we have had has still not convinced me how that will happen in a practical way, and that is very much what I will be looking to the Minister to explain to me and others when we meet before Report. At the moment, though, I beg leave to withdraw my amendment.

Amendment 35 withdrawn.

Amendment 36

Moved by ***Lord Lansley***

36: Clause 2, page 3, line 36, at end insert—

"(5A) If the fisheries policy authorities (or any of them) believe that a statement under this Act is or would be, if made, inconsistent with their policies, they may request an independent reviewer, which the Secretary of State must appoint, to report within 6 weeks.

(5B) The Secretary of State and fisheries policy authorities must have regard to the report of the independent reviewer appointed under subsection (5A) in making a JFS thereafter.

(5C) The Secretary of State must have regard to the report of the independent reviewer appointed under subsection (5A) before setting out policies in a Secretary of State fisheries statement under section 4, which would otherwise be included in the JFS."

Member's explanatory statement

This amendment would interpose an independent review, if requested by an authority, if there is a difference of view over policies. It would seek to resolve disputes between authorities before policies are set out in a Secretary of State's Statement, rather than in a JFS.

Lord Lansley: My Lords, I would be grateful if noble Lords would look at the revised version of Amendment 36 on the supplementary Marshalled List. It is revised not because I have changed my view about what it should say but because there was a transcription error on the Marshalled List. If one is referring to Amendment 36, I would be grateful if one would look at the version on the supplementary list. The difference is that the revised version says "6 weeks" for the report of an independent reviewer, not "six months".

[Lord Lansley]

This is my best effort thus far to meet the test that my noble friend set us on Monday afternoon, when he said that this Bill had been through the mincer to an extent beyond that which most Bills do. He said any change had to meet the test of,

"Gosh, I wish we'd thought of that."—[*Official Report*, 2/3/20; col. 421.]

So this is the amendment that I am hoping the Government might wish they had thought of.

Why do I put it forward? It is like lawyers writing contracts. When people write a contract together, they often sit down and write it on the basis of the agreement they plan to come to. The lawyers carefully explain to them that the purpose of the contract is not simply to give effect to the agreement but to explain what happens when things go wrong. Legislation has to be like this as well; it has to explain what happens if there is no agreement.

My Amendment 36, and indeed this group, provide an opportunity at this stage to look at the process of establishing joint fisheries statements and the Secretary of State's fisheries statements. I think what we need to do is present that challenge in question. Discussions on the Bill, and between the fisheries authorities of the United Kingdom, have gone very well. However, this does not mean that we cannot be in a position where there might be an element of disagreement about the policies that should be pursued by the respective authorities.

One might say that the Secretary of State writes the policies that they want to pursue in a Secretary of State fisheries statement, that these will no doubt be the reserved matters, and that the respective fisheries policy authorities will set out their own policies on the non-reserved matters. It is not like that, in my view, for two reasons. First, with regard to replacing the common fisheries policy, the industry, if there is no common United Kingdom policy, wants to see at the very least a degree of consistency, not least because there are some objectives that have to be pursued together. We do not have to go back over all of these, but the equal access objective, for example, means that there must be a degree of co-ordination and consistency built into the structure of the licensing processes.

The second reason is that the Secretary of State's fisheries statement is not simply about reserved matters: it is about quota and how it is used. As we will discuss when we come to Clause 23 and subsequent clauses, the use of quota and the determination of fishing opportunities can override all the devolved matters.

I should say that I was prompted to write Amendment 36 by the National Federation of Fishermen's Organisations, which has said for some time that it wants a dispute resolution mechanism. It wants the fisheries policy authorities, so far as possible, to agree, and for their policies to be reflected in a consistent fashion in a joint fisheries statement. This is something we should endorse. The NFFO did not, however, suggest how the dispute resolution should function, so I took that upon myself—so any deficiencies in the drafting of the amendment or the proposed mechanism lie at my door, not at the NFFO's.

The NFFO wants a dispute resolution mechanism because it is concerned that it will not otherwise be possible to deliver the equal access objectives, and that things like the economic link requirements under the licences would diverge significantly and cause difficulties for the industry. It feels that devolution is a highly desirable aspect of making decisions, but understandably it does not want this to be done at the cost of the industry finding conflicting and inconsistent decisions in relation to these objectives.

I commend Amendment 36 and will refer very briefly to Amendments 66 and 68, which are also in this group. This takes us into Schedule 1, which is about the process for making the joint fisheries statement and the Secretary of State fisheries statement. At the moment—and I find this interesting—the policy authorities will be publishing a consultation draft. Unless I am mistaken—and I will be glad to be corrected by my noble friend if so—this means that it is not a formal consultation but the publication of a draft at a suitable moment: one on which the Government say that they are happy to receive representations and that they will draw it to the attention of all interested persons.

7.15 pm

My amendments probe what the Government's actual intentions are. I think that the consultation draft—as we need to hear—will be published at a point when decisions have not been finalised, and must be brought to the attention of the people whom it affects. I instance the fishing fleets—not only those that operate in our coastal waters but also those that do so in more distant waters, because we are dealing with the determination of fishing opportunities that could extend beyond our own exclusive economic zone.

I do want—and look to my noble friend to offer—assurance about the way in which the Government and the fisheries policy authorities will go about the processes of securing representations at the right time from the right people. I beg to move.

Lord Selkirk of Douglas: My Lords, if nobody else wishes to speak, I want to do so on behalf of my noble friend the Duke of Montrose, who unfortunately could not be here today but who gave me permission this morning to speak to his two amendments in this group, 40 and 47.

Amendment 40 states:

"If, in the light of a review, the fisheries policy authorities conclude that changes are not required to the JFS, they must prepare and publish, as soon as reasonably practicable, a statement setting out the reasons for that conclusion."

My interpretation of this is that if, in the light of a review, the fisheries policy authorities conclude that changes are not required to the joint fisheries statement, they must prepare and publish as soon as practicable. In other words, there must be as much openness as possible in the statement setting out the reasons for that conclusion.

Amendment 67 states that the period should be

"not less than 28 days".

This means that the facts must be realistically and correctly stated in the document that would be issued. This decision ensures that the scrutiny period for

consultation on the joint fisheries statement should be long enough to ascertain all the facts. It is a safeguard that should be supported, and I submit that it is in the interests of everyone involved. The purpose is to prevent a conclusion being rushed out when all the scientific evidence may need to be taken into account for the cause of sustainability.

I do not think there is anything more I can adequately say on this subject, as the facts speak for themselves.

Baroness Bakewell of Hardington Mandeville: My Lords, I am grateful to the noble Lord, Lord Selkirk of Douglas. I too was going to speak to Amendments 40 and 47 on behalf of the noble Duke, the Duke of Montrose—the Law Society of Scotland had sent me a very extensive briefing—but the noble Lord has made all the points that I would have made.

On issue of the 28 days, we have Amendment 69, which mirrors Amendment 67. The Bill currently requires each of the fisheries policy authorities to specify a period for scrutiny of the consultation draft of the joint fisheries statement, but no definition is set out in paragraphs (3) and (4) of Schedule 1. There is no timescale attached to the definition, and it is important that we have one.

The Bill provides that each fisheries policy authority must specify a period for scrutiny of the consultation draft by the appropriate legislature. To rectify this, we propose a minimum period of 28 days if scrutiny must be undertaken. That is important, so I echo what was said by the noble Lord, Lord Selkirk.

Baroness McIntosh of Pickering: My Lords, I support the amendment in the name of the noble Duke, the Duke of Montrose, and have added my name to it. I know that my noble friend the Minister will say that the amendment is not needed, but I would argue that it is. If there were no changes to the joint fisheries statement, we should be able to understand why that was the case and why everyone had agreed. It would be helpful to have more openness and transparency in that regard.

Lord Teverson: My Lords, I have a number of amendments in this group which I am sure the Minister will be able to bat away quickly and easily. I congratulate the noble Lord, Lord Lansley, on his amendment: it is a problem that I thought we would never have, but he suggests a way to resolve it and I am sure that he would make an excellent independent adviser if it should ever arise.

Clause 3(1) states:

"The fisheries policy authorities may at any time prepare and publish a replacement JFS."

It comes back to trying to make the rules clearer. Can one of the authorities trigger this, or does there have to be a consensus? I look to the Minister for guidance on what precisely that mechanism is.

I always like simplification in life. While I understand what the Bill is trying to do in requiring two fisheries statements, it would be great to have a combined document so that everybody could understand how the policy looks as a whole. That would be terribly useful to the consumers of the legislation; that is, the industry and all the stakeholders.

I would be interested to hear from the Minister how the department came to six years as a review period. We have American presidential elections every four years, the World Cup is every four years, the Olympics are every four years, and fixed-term Parliaments are every five. Why six? It would be better if it was five. Six years seems a long time in terms of marine ecology and fisheries statements. It should be looked at just a little more regularly.

Baroness Jones of Whitchurch: My Lords, we have a relatively simple amendment, Amendment 74, in this group. The Bill requires the fisheries policy authorities to produce periodically a report on the extent to which their policies as set out in the joint fisheries statement have been implemented. Where there is an omission, the Secretary of State is required to intervene.

The amendment would require the Secretary of State, if required to produce a report on the policies omitted from the joint fisheries statement, to consult not only the devolved Administrations but a wider group of representative bodies on the content of the report. It is a straightforward amendment which seeks to fill a gap in the consultation provisions made elsewhere in the Bill. The provision in Schedule 1 does not spell this out in sufficient detail.

On an earlier amendment, the Minister read out a list of representative bodies which the department regularly consults, which of course is welcome, and described it as an "expert advisory group". However, that is different from a statutory requirement to consult at various stages of policy production and review. I hope that the Minister will concede that our amendment would fill a gap in the consultation proposals. Like the noble Lord, Lord Teverson, I hope that she does not just bat it away.

I am grateful to the noble Lord, Lord Lansley, for his amendments. As he said, we need mechanisms to address what happens when things go wrong, and he made a good stab at doing that. He made the useful proposal that an independent review could be sought when conflicts over policies and their application arose. I hope that the Minister agrees that those proposals have some merit. The noble Lord's other amendments touch on the extent to which representatives of the UK fishing fleet should be consulted. Again, that is important. We agree with the proposal but, as in our amendment, would want any consultation extended to a wider group of stakeholders.

The amendments in the name of the noble Lord, Lord Teverson, relate to the timescale for the review of joint fisheries statements. He proposed a more meaningful review period of five years rather than six. We agree that there is little logic in the six-year timescale. Given that it is assumed that international negotiations will continue to take place annually, it seems far more practical to review and update the joint fisheries statements in a more timely way in line with changes taking place scientifically and the negotiations with the international community. As he said, five years is consistent also with the parliamentary cycle, so there seems to be not much logic for six and a whole lot more logic for five. I hope that the Minister is able to take that on board.

The noble Duke, the Duke of Montrose, seeks via his amendments to build more flexibility into the production of joint fisheries statements. He may have

[Baroness Jones of Whitchurch]
a point, although I doubt that there would be many occasions where there would not be some need for a review every five or—if necessary—six years.

At the heart of these amendments is a need for proper statutory consultation, meaningful timeframes, the best advice and flexibility. I hope that the Minister will see the sense in the proposals and perhaps take some on board.

Baroness Bloomfield of Hinton Waldrist: My Lords, I congratulate your Lordships on getting through a daunting-looking group of amendments in record time. Your points have been made well and succinctly.

Any Secretary of State fisheries statement, or SSFS, would cover only reserved and UK quota matters and would be published only if such matters were not covered in the joint fisheries statement. It is our intention that the joint fisheries statement will be the vehicle which sets out the fisheries administrations' future fisheries management policies, respecting the devolved nature of fisheries but recognising the benefits of a joined-up approach.

My noble friend Lord Lansley's Amendment 36 relates to a process to resolve disagreements through an independent review. While I appreciate the sentiment behind making provision for disagreements over policy between fisheries policy authorities to be dealt with amicably, it is unclear exactly how he is interpreting the expression

"a statement under this Act".

Sadly, I am advised that the amendment would create legal uncertainty.

In respecting the devolution settlements, the provision for a JFS allows for the fisheries policy authorities to set out individual policies alongside those agreed jointly. This means that an authority could publish its own policies if they would contravene its wider policies as part of the statement. Therefore, given that the statement requires administrations to set out their policies, it is hard to envisage how they could then claim that the statement was incompatible with those very policies. If the amendment related to the SSFS, the Bill is clear that this can contain only reserved or UK quota matters, so it would be inappropriate for other fisheries authorities to be able to block a decision by the UK Government in this case. The amendment also seems to allow for a review to be invoked at any time after a SSFS or JFS is finalised, potentially leading to uncertainty around the state of those documents after they are in force.

The review process could also cause problems for the fisheries policy authorities in complying with what the Bill sets out as their legal duty to produce a joint fisheries statement, because it would appear to undermine the statutory framework for co-operation that we are seeking to build, by consent, with the devolved Administrations. I appreciate the concerns that my noble friend seeks to address through the amendment, but perhaps I can provide further reassurance to him by saying that other, non-legislative elements of the framework will be set out in a memorandum of understanding which is being developed with the devolved Administrations. This will enshrine co-operative ways of working and a mechanism for escalating and resolving disputes, were they to arise. Existing governance structures and agreements such as the overarching MOU on devolution between UKG and the devolved authorities, which sets out the JMC process for managing intergovernmental disputes, will also continue to apply.

7.30 pm

I turn to Amendment 37, tabled by the noble Lord, Lord Teverson. Schedule 1 states that in consulting on a draft, there is a requirement for the fisheries policy authorities to act jointly. Paragraph 4 of that schedule ensures that the fisheries policy authorities, acting jointly, must publish the JFS as soon as is reasonably practicable. I hope this makes clear to the noble Lord that the JFS is a joint endeavour.

I will address the amendment to reduce the period between reviews of the JFS from six years to five years together with similar amendments relating to the SSFS, as the logic behind the decision for a six-yearly fisheries statement cycle applies to both statements. We believe a six-year period to be sufficiently regular to ensure that both statements are up to date with the current state of fisheries management and best available scientific advice, while providing enough stability and management to enable results to become apparent. The six-year period also reflects the practice of reviewing marine plans as set out under the Marine and Coastal Access Act 2009. I am reliably informed by my noble friend that this is a Bill which the noble Baroness, Lady Jones of Whitchurch, was rather proud of. It also allows reviews to be scrutinised by all the relevant legislatures, thereby ensuring that the priorities of the legislatures of the day can be reflected, as the JFS will need to be scrutinised by all four legislatures, including those in the devolved Administrations which operate on different electoral cycles. It seems prudent to allow a little more time between reviews. Also, the six-year period is a maximum time allowed between reviews. If appropriate, a statement could be reviewed earlier.

In addition, the Bill now commits the fisheries policy authorities to report every three years on progress against these objectives. This increases transparency and accountability further. As Clause 3 allows for the statement to be amended as the need arises and Clause 11 provides for a three-year reporting period, I hope that the Committee will agree that we will be able to respond quickly to changing circumstances and environmental needs as required, ensuring that the policies in our statements remain fit for purpose.

I am grateful to my noble friend Lord Selkirk and the noble Baroness, Lady Bakewell, for speaking to the amendments by the noble Duke, the Duke of Montrose, seeking to require fisheries policy authorities to publish an explanation of their reasons if they choose not to amend the joint fisheries statement following a review.

I fully support the need for transparency around reviews of the statement. However, Clause 3 and Schedule 1 require a statement to be reviewed at least every six years and progress against the objectives to be reported on at least every three years to ensure that the policies remain fit for purpose. The fisheries policy authorities will consult on any changes to the JFS, any SSFS and any fisheries management plans.

Fisheries management needs to be adaptive due to the dynamic nature of the environment. It is therefore extremely unlikely that the JFS, which will include policies for all the fisheries policy authorities, will not require changes. That is why this clause allows the statement to be amended as need arises in accordance with processes outlined in Schedule 1.

Amendment 41 seeks to ensure as much clarity as possible on the policies of the UK as set out in the two fisheries statements. I agree that anyone reviewing the fisheries statements should be able to review the documents with ease. However, it is important to recognise that the documents serve different purposes in that they deal with devolved and non-devolved matters. They are therefore subject to different preparation and scrutiny requirements. It is therefore important that the two statements remain legally distinct from one another. I am happy to commit that if both statements are published, each will be referenced on the relevant website to make it clear that the two are linked.

I shall address Amendments 66 and 68 together. These amendments afford me the opportunity to provide clarity on the consultation process for both statements. My noble friend raised concerns at Second Reading that the consultation process needs to balance a range of interests and that consultation may not go beyond publishing the documents online. We have begun engaging informally with stakeholders and will continue to do so. A full public consultation will also take place on these statements.

Schedule 1 ensures that a consultation draft must be brought to the attention of interested parties, including members of the public, and that the final text must have regard for any representations made. Both documents will also go before legislative assemblies of all four fisheries administrations.

Paragraph 2(1) sets out that the consultation drafts must be brought to the attention of interested persons. This is broadly defined to recognise that there will be a wide range of views which must be taken on board. We have taken legal advice which confirms that there is no need to specify groups already within the scope of this definition. I also wish to reassure my noble friend about the process of consultation. It is true that drafts of consultation will be made available online, but wider engagement will also take place. Indeed, the Government and devolved Administrations have already begun conversations with a range of stakeholders about the joint fisheries statements. The statements are also subject to parliamentary scrutiny, and it is right that during this process, not only are the statements themselves scrutinised, but the right level of engagement is carried out to ensure the statements have been brought to the attention of interested parties.

Legislative scrutiny is the area that my noble friend the Duke of Montrose, the noble Lord, Lord Teverson, and my noble friend Lady McIntosh sought to explore in Amendments 67 and 69 respectively. I am supportive of the principle underlying my noble friend's amendment to allow Parliament sufficient time to examine a draft of the JFS and a similar ambition in relation to the SSFS. There is precedent for not specifying a minimum period for parliamentary consultation in a Bill; notably, in the Marine and Coastal Access Act 2009. Your Lordships can be assured that discussions with the House authorities and a relevant Select Committee on the appropriate time needed for consultation will take place and the department will ensure that an appropriate amount of time is given for scrutiny.

The date of the adoption of the JFS of 18 months after the Bill passes will ensure that enough time is given to scrutinise the draft statement, both by the public through robust consultation and by members of each UK legislature. The date of the adoption of the SSFS, if one is required to be published, will be no longer than six months after the adoption of the JFS, again allowing time for appropriate scrutiny.

In relation specifically to my noble friend's amendment, as the JFS will also be scrutinised by the appropriate legislatures in Scotland, Wales and Northern Ireland, it is not appropriate for the UK Government to specify how each Administration undertake scrutiny, as this would cut through the internal processes of the devolved legislatures.

Turning to Amendment 70, I reassure noble Lords that the fisheries administrations have regular and routine engagement with stakeholder groups across the UK. Such engagement will continue so that stakeholders will be able to contribute to the development of fisheries management plans and to their implementation. The Government do not consider it necessary to set up statutory local advisory boards. Again, I highlight that Schedule 1 to the Bill already requires fisheries authorities to consult with interested persons.

Amendment 74 in the name of the noble Baroness, Lady Jones of Whitchurch, seeks to widen the consultation process when developing the progress report for the SSFS. The Bill refers to consulting with the devolved Administrations on the development of the report because the SSFS may contain additional policies relating to the reserved and UK quota matters necessary to delivering those fisheries objectives. As the report may cover progress against policies of relevance to the devolved Administrations, we consider it appropriate to consult them specifically. It is important to note that the report will subsequently be published and available widely. It will also be laid before Parliament.

While we will always seek to consult stakeholders where appropriate in implementing policies set out in the SSFS—or, for that matter, the JFS—a statutory duty to consult on the interim review is disproportionate and would create an unnecessary burden. Instead, we believe that the requirement for a formal consultation, when the statements are fully reviewed at least once every six years, is sufficient. With this explanation, I hope my noble friend will feel able to withdraw his amendment.

Lord Teverson: I did not understand the Minister's response on my Amendment 37. I am specifically trying to understand how the joint fisheries statement is triggered. Forgive me, I may have misheard the Minister, but can it be triggered by any one of the authorities or does it have to be unanimously triggered by them? It is not specified, and that obviously makes a big difference to when replacements might be demanded or when they might happen. Clause 3(1) does not say how those are triggered, just that they can be at any time. It is by one, two, three or four of the devolved authorities?

Baroness Bloomfield of Hinton Waldrist: There was a part of the speech that got cut, which I think may provide some elucidation on this point. The JFS is a joint endeavour; all fisheries policy authorities must work together throughout the drafting processes, publication, and review and replacement of the statements. All authorities must agree to go consultation and to publish. I hope that answers the noble Lord.

Lord Teverson: So, to clarify, there has to be unanimous agreement between all authorities for a replacement policy to be a triggered?

Baroness Bloomfield of Hinton Waldrist: I think I had better write to the noble Lord in response to that question.

Lord Lansley: I am grateful to my noble friend. There were 14 amendments in this group, so it was not easy to tackle them all, not least since we managed to introduce them all in 18 minutes—it did not leave a lot of time for the preparation of notes on amendments. I am also grateful to the noble Lord, Lord Teverson, because the point he just made in his further intervention illustrated forcefully the point I was making. This is all absolutely fine if everybody agrees; it is when they do not agree that we want the legislation to tell us what happens. I do not think it does that yet.

My noble friend has explained that there will be a memorandum of understanding and, as we have heard, there is the 2012 concordat relating to licence conditions and how the economic link requirement is implemented and so on. I do not dispute that non-legislative means may well deliver the co-ordination between the fisheries policy authorities that is required, but it is not transparent to us now; nor is it transparent yet to the industry. That is why the National Federation of Fishermen's Organisations asked, quite properly, the questions and illustrated how problems could arise; for example, on the implementation of the equal access objective.

My noble friend quite rightly challenged my drafting, but we can deal with that if we need to. It could perhaps be "statements under this Section" and not "under this Act"; we can deal with that very easily. If necessary, we can make it very clear that the independent reviewer could be resorted to by any of the fisheries policy authorities before the point at which the joint fisheries statement is made—that is just to clarify; I thought it was clear but it clearly was not. We can deal with the drafting.

The issue that we come back to is: what happens when they do not agree? I am afraid that my noble friend lapsed straight into the problem that I think we are trying to avoid, which is that the fisheries policy authorities that have devolved responsibilities will set out their policies and the Secretary of State will set out policies on reserved matters in the Secretary of State fisheries statement. As I think the noble Lord, Lord Teverson, made perfectly clear, we want and the industry needs—and it will clearly be better—all the policies to be set out in the joint fisheries statement. They can be; there is absolutely nothing in the Bill that requires the Secretary of State to publish a Secretary of State fisheries statement on reserved matters. The Secretary of State can put it all into the JFS. It would be better if it were all in the JFS, but it will all get into the JFS only if there is agreement between all the authorities to this effect. But that is pretty important: remember that the reserved matters in this context include quota functions—the catch quota and effort quota—which could, in certain circumstances, completely override what might otherwise be the licensing of fishing boats by devolved authorities. If we can get it all into the JFS, it would be a better outcome.

I will happily beg leave to withdraw the amendment, but I do not think that we have concluded this conversation. We need to keep this conversation going, and I hope that my noble friend will make it clear that we will—she does not need to go back to the Dispatch Box. On that basis, I beg leave to withdraw my amendment.

Amendment 36 withdrawn.

Clause 2 agreed.

Clause 3: Joint fisheries statement: procedure

Amendments 37 to 40 not moved.

Clause 3 agreed.

Clause 4: Secretary of State fisheries statement

Amendments 41 and 42 not moved.

Clause 4 agreed.

Clause 5: Secretary of State fisheries statement: procedure

Amendments 43 and 44 not moved.

Clause 5 agreed.

Clause 6: Fisheries management plans: duty to comply with proposals in JFS

Amendments 45 to 58 not moved.

House resumed. Committee to begin again not before 8.46 pm.

Schoolchildren: Dyslexia and Neurodiverse Conditions

Question for Short Debate

7.47 pm

Asked by ***Lord Addington***

To ask Her Majesty's Government what assessment they have made of the problems of and possible solutions for children in the school system with dyslexia and other neurodiverse conditions.

Lord Addington (LD): My Lords, I thank everybody who has put their name down to speak in this debate. I should probably declare my interests, which I am afraid are slightly legion in this case: I am dyslexic; I am president of the British Dyslexia Association; and I am chairman of Microlink PC, which is an assistive technology company—there are probably a couple of other things, but I think we have the gist of it.

Why did I table this debate? It is because, at the moment, special educational needs are in trouble. It is a very good concept; many Governments have said over a long period of time that we will stop allowing X percentage—say 20% or 25%—of our pupils to be written off, which historically had happened. But we are now saying they shall be educated—great—and we have a legislative structure that says they shall be provided with help, and we have got ourselves into a position that is probably a classic case of the road to hell being paved with good intentions, where we are letting down people who are trying to fulfil all this.

Before we go any further on this, I apologise for starting with dyslexia; I realise it ain't the only show in town. Autism, dyspraxia, dyscalculia, ADHD are all there, but dyslexia is the one I know best, the one I had the best briefing on, and the one I am least likely to make a mistake on.

The British Dyslexia Association reckons that 80% of those on the spectrum—and it is a spectrum—are unidentified by the time they leave school. We are only touching the edges. Most of those with most of the problems are probably not the most severe—those with the Belisha beacon that says, "There is a problem here, so come to it"; it is those at the edges, the people who are just underachieving, just failing. This is probably the group where we should put much more attention, because these people often do not get spotted, do not get assistance and either fail or, more likely, very much underachieve.

We have had descriptions of the issue, and as always the Library's briefing captures it when it quotes a House of Commons Education Committee report, published last year, describing the system as,

"'badly hampered by poor administration' and a 'challenging funding environment' … The Local Government Association has stated that the current system is at a 'tipping point', as demand for SEN services has risen much faster than funding has been made available."

We have real problems here. Why do we have problems? The fact is that somebody who is dyslexic, dyspraxic or whatever it is gets placed in a classroom that is designed for the other groups. If you are dyslexic, you are usually taught most of your subjects via a whiteboard or with somebody repeating dictation. You are expected to acquire the language quickly enough to be able to process it in that way. If you are dyspraxic, you are not writing it down quickly enough. If you have an attention deficit disorder, you cannot concentrate for that period of time. If you have autism, there may be a fundamental gap between what is being asked of you and how you understand it. Every one of these processes means that that challenging classroom situation becomes, for you, something that is either much more difficult to overcome or actually impossible.

What is the natural reaction to this of any pupil in that place? It is survival, is it not? To take dyslexia again, the classic reaction is either to disappear in the middle of the class—become invisible as much as you can—or disrupt it. Both are perfectly natural reactions. You have got rid of the pressure on you; you are fine. The fact that you are not being taught is something that will catch up with you in later life, but at the time, if you are eight or nine years old, you cannot deal with what is going on so you will take a survival method.

What happens to the teacher? The teacher does not know what to do, because they are not trained; it is as simple that. They are not trained to spot or to give support. If we cannot train everybody to be an expert in all these subjects, we can certainly make them slightly better at spotting problems. What we must do is quite simply bring the expertise into the school system. It will cost about £4,000 to get a level 7 qualified dyslexia teacher trained up, and it will be roughly similar, I am told, for the other major disability groups—and these are disabilities, I feel. You are supposed to get £6,000 spent on you by a school when you start. The first £6,000 comes out. Whatever happens, it is not expensive to get some structure in there. If we put extra units and extra response capacity into initial teacher training, we will probably save time and money in the long term and probably in the medium term.

Let us not forget that, the last time I looked, more than £80 million is spent on appeals to get an education, health and care plan. It has become a solution for some 3% of the school system. It was never designed to be that. The response I got, rather manfully, from the Government Front Bench in the past was, "Oh, but the Government do not lose all these cases." No: it is only about 87%. Autism is greatly overrepresented in this process. Something is wrong here. Unless we get more support into the classroom and stop having to go back to local authorities, which are under budgetary pressure, again we have a problem. The school has a problem here. We need another approach.

The Government have said they will spend £500 million, I think—I forget the exact figure—on high-needs cases. What is a high-needs case? Is it the people who are already spotted, or is it those people who have had a moderate problem that could have been dealt with but has become worse? In the case of dyslexia, they say, "We will not come in and help you unless you have been failing for three years." Let us take a moderate problem and make it that much worse, that much more difficult to deal with.

Let us also remember that, with a whole-school approach, we can look wider than the classroom. I have met people who have said, "Did you know you can get autistic people to do games?" Apparently, a lot of autistic people like cricket: nice function, nice individual team game. Apparently, they are good strikers in football, better than midfield generals. It is possibly understandable. These things go on. A PE teacher might be better at understanding dyspraxia. It was a great revelation to me—I should have known this, but I did not—that many people with dyspraxia have terrible trouble getting fit and staying fit. When you think about muscle memory, it probably becomes slightly more understandable. So let us look outside the classroom as well, because for some groups PE or playtime will become a response; a place to hide and get some relief. For others, it becomes worse.

Finally, one thing that hits all these groups, and probably hits dyslexics worst, is the marking of spelling, punctuation and grammar. You can lose 5% in English language, history, geography and religious studies, I think it is. That may not sound that big a thing, but I put it like this: at the top end of the problem, you are not going to get a 9 in a 1 to 9 grading if you lose 5% if

[LORD ADDINGTON]

you use dictation or computer-operated systems. I use computer-operated systems all the time. For English, you can lose 20%. It is said that if you spell out every word, you will not lose it for spelling. If you are dyslexic and using a computer-operated system, you cannot; it is almost impossible. The fact that the fine-detail memory or short-term memory of someone within the dyslexia spectrum is not good means that they are not going to take on the arbitrary rules of grammar and punctuation—and they are fairly arbitrary—and they will be marked down. And English, where you can lose 20%, is a gateway subject. If you do not get English, you cannot do X or Y afterwards. Noble Lords who think that that is bad should look at the functional skills problems in further education.

There are many problems here. I finish with a final anecdote, which the Minister's office has certainly seen. There are skills that you could mark when you are using assistive technology. For instance, when the Minister's office wrote to me asking what I was going to be talking about, I sent back a message. I meant to say, "The principal thrust of what I am going to say", but apparently what came through was, "The printable thrust of what I am going to say." Possibly that is a skill for not reading backwards. You could remark and put them down, but that is one you should get right. Will the Government give us their ideas about this? They are talking about increasing use of the technology going through the process—it is in one of the responses I have with me, I think it is from Michelle Donelan. You have something you can mark that people can achieve. Please, can we look at this and become slightly more realistic about the support that can be given?

7.57 pm

Lord Touhig (Lab): My Lords, we are grateful to the noble Lord, Lord Addington, for securing this debate and introducing it with knowledge and passion. Maya Angelou once said that we must

"teach young people early on that in diversity there is beauty and there is strength."

This debate is about including all children in education and ensuring our schools are proud of their diversity. My focus is on the positive impact that comes with providing a good education for every child.

I start by considering the problems children face in schools at the moment. Every day, autistic school children must contend with sensory challenges, social communication problems and a lack of routine. Looking at the bigger picture, I ask whether our education system is willing to teach or even capable of teaching autistic children at all. Why do I say that? A National Audit Office study in 2017 found that SEND pupils accounted for 45% of all permanent school exclusions and 43% of fixed-term exclusions, despite accounting for only 15% of pupils. This is not to mention unofficial "soft" exclusions, whereby parents are asked to take their children home for a "cooling off period". In 2017, Ofsted found an "alarming number" of these, despite unofficial exclusions being unlawful. In 2017, 12% of inquiries at the National Autistic Society's schools exclusion service related to informal exclusion. A survey carried out by the society and the All-Party Group on Autism found that one in four parents said that their child had been "informally" excluded at least once from school in the previous year.

In 2018, the Fischer Family Trust found that there were 7,700 more children "missing" from schools in England than the government figures revealed. What is being done to find these missing pupils and crack down on these illegal exclusions? The problem is also linked to the ongoing scourge of off-rolling—the practice of removing a pupil from the school roll without using a permanent exclusion. It is aimed at serving the best interests of the school, rather than that of the pupil. Ofsted found that off-rolling is more likely to happen to children who have special educational needs. Can the Minister say how this is being combated?

We should look for solutions first, and acknowledge that off-rolling can come from underfunding and school competition. Ofsted should crack down on schools that off-roll pupils and thereby deny them the education they deserve. It would also be worth reviewing school league tables and the role that competition plays in schools wanting to offload pupils who have worse results. We should encourage our schools to value all their pupils; the variety of ideas and talents that are brought from the neurodiverse community is so important. We must consider the role that school league tables play in promoting anti-neurodiverse practices in schools in favour of the superficial facade of good results. Do the Government intend to review school league tables?

Underfunded training and fewer resources to support children with special educational needs is another factor. While the number of children identified as having the greatest need rose by 10% between 2013 and 2018, funding for pupils dropped by 2.6% in real terms. The Government announced £700 million for special educational needs this year, but nothing in the following years. Why? Can the Minister explain that?

Finally, the benefits of ensuring children with special educational needs are in school are evident to all of us. Studies show that inclusive learning is beneficial to all students, not just those with special educational needs. Children with special educational needs have fewer absences, develop stronger skills in reading and maths, and their peers are more comfortable and tolerant, increasing self-esteem and encouraging diverse and caring friendships.

We are right to discuss this problem this evening. Children with special educational needs deserve to be, and are right to be, in school. First and foremost, we must ensure that they can be there in the first place. The beauty and strength of diversity that comes with ensuring every child attends school will improve the learning skills of all our children, ensure that they have a well-rounded education and contribute to the more inclusive society which we all want in our country.

8.02 pm

Lord Lexden (Con): My Lords, all those in our school system who seek to provide better assistance and support to children with dyslexia and neurodiverse conditions have no more determined and effective champion in this House than the noble Lord, Lord Addington. He deserves strong support across the House this evening. The current system is, indeed, in trouble, as he said at the outset.

A government review is in prospect. Announced last September, further details about it are eagerly awaited, as my noble friend who will be replying to this debate will be well aware. The review will need to be conducted thoroughly and swiftly, leading to clear recommendations for improvement. Sadly, these are not always features of government inquiries. The noble Lord, Lord Addington, and his supporters across the House will need to keep a sharp eye on this.

The all-party Commons Select Committee on Education, in its report last year on special educational needs and disabilities, found that

"the 2014 reforms have resulted in confusion and at times unlawful practice, bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences".

This is a formidable catalogue of woe. It is up to the Government, through their review, to set the scene at last for the success we all want to see in the reformed system, created amid such high hopes in 2014.

I declare my interest as president of the Independent Schools Association, which works on behalf of nearly 550 smaller, less well-known schools in the independent sector, whose good work attracts little attention in the media. I wish that commentators and education pundits would look more closely at them. They would get a more accurate understanding of what the independent sector as a whole is really like today. Many of the association's schools are giving very effective help and support to the kind of children who are at the forefront of our thoughts in this debate.

One school in particular always leaps to my mind when dyslexia is under discussion: Maple Hayes Hall School, near Lichfield. It is known to the noble Lord, Lord Storey. It achieves magnificent results year after year for the 100 or so pupils with severe dyslexia that it can accommodate. Ofsted rates it as outstanding. What is the secret of its success? The joint heads, Dr Neville Brown and his son Dr Daryl Brown, explain:

"Pupils who come to us have had great difficulty in learning their letter sounds, in splitting up the oral word into syllables and the syllables into their component sounds or 'phenomes', and in getting these sounds and their letters in the right order when spelling words. The dyslexic child has extreme difficulties in learning to read and write by phonics. We specialise in teaching methods which lead away from a dyslexic's area of weakness and build on their strengths with a range of targeted teaching strategies which do not involve phonics or multi-sensory methods. A good all-round education follows."

These world-leading experts are now working on a phenome dictionary, which will be the first of its kind in the world. What is truly tragic is the time they have to spend battling with local authorities which seek to obstruct families with EHC plans exercising their right to choose a place at the school. The government review must address not only the inadequate funding of the system as a whole but the bias of some local authorities which want to keep money away from schools such as Maple Hayes, despite the outstanding results achieved.

It is interesting to note that at Maple Hayes the emphasis is on moving away from a child's weakness and building on their strengths. That is at the heart of the approach advocated by leading authorities on neurodiversity. An American expert, Dr Thomas Armstrong, said in 2017:

"Special education needs to change … For too long it's been weighed down by a history emphasising deficit, disorder, and dysfunction … the role of the neurodiversity-oriented special educator"

should be

"one of creating environments within which neurodiverse students can thrive."

Some very useful comments were made by the noble Lord, Lord Addington, as to how a more positive approach could be achieved.

In this debate, we are all conscious primarily that the existing system is far from fulfilling the hopes with which it was introduced in 2014. But is there, perhaps, a deeper problem arising from the deficit model that the system incorporates? That, I think, is a question worth careful consideration.

8.07 pm

Lord Bilimoria (CB): My Lords, it was very early—in kindergarten—when it was spotted that our younger son Josh might have an issue. By the age of six or seven, his prep school gave up on him, so we sent him to a specialist learning school here in London. It tried for two years but he did not improve that much. At nine, we sent him to boarding school—Bruern Abbey in Oxfordshire—a specialist school with 10 children to a class and two teachers per classroom. He improved and improved and got into one of the finest schools in the world at the age of 13. He was at the bottom of the school when he started but, last year, he finished at that school at 18 with three A*s at A-level.

There were three reasons for his improvement. First, we spotted it early. Secondly, we had access to the best possible teaching for his condition, which was dyslexia, dyspraxia and ADHD. Thirdly was his effort—you can get there. One of my team, Omaar from India, said it was spotted from the age of six that he had an issue. His parents got him tuition all through his schooling and he ended up doing a master's at UCL. However, that is for people who can afford it.

I thank the noble Lord, Lord Addington, for initiating the debate. In January 2019, 14.9% of pupils in England had a special educational need—SEN—and yet only 3.1% had an EHC plan. In its September 2019 report, the National Audit Office said that the current system of support is not "financially sustainable." The Local Government Association has stated that the current system has reached a "tipping point" as demand for SEN services has risen much faster than funding has been made available. I have spoken to John Floyd, the headmaster of Bruern Abbey School, which now has 160 boys. He said that the law is good, but access to support is agonisingly slow and difficult. The noble Lord, Lord Addington, talked about the appeals process. John Floyd went on to stress the importance of teaching in the right way and observed that dyslexic children are not achieving their potential.

Professor Julie Allan, professor of equity and inclusion at the School of Education at the University of Birmingham, has said clearly that SEN children

"are not being supported adequately"

and has referred to

"the view expressed by parents and special needs groups that there is a 'crisis' in SEN provision."

[Lord Bilimoria]

She concluded:

"This failure to provide adequate support is, in part, a consequence of the increased demand."

The CBI, of which I am vice-president, has said that the business case for diversity and inclusion is "rock solid" and yet EY research found that 56% of global senior executives rarely or never discuss disability in their leadership agenda. As a country, we have to do a lot more.

I helped launched DARE to Think Differently with Autistica, a wonderful autism charity founded by Dame Stephanie Shirley, one of the biggest autism benefactors in the world. It points out clearly that while 16% of autistic people are in full-time employment, 77% want to be in work. We know about the famous dyslexics, the Winston Churchills, Albert Einsteins and so on. Richard Branson has said:

"I was seen as the dumbest person in school."

He has set up a fantastic charity and pointed out that dyslexic people have a unique set of skills that are really important to business. The 2019 House of Commons Education Select Committee report, *Special Educational Needs and Disabilities*, states clearly:

"Special educational needs and disabilities must be seen as part of the whole approach",

but goes on to observe that the approach of the Department for Education is

"piecemeal, creating reactive, sticking-plaster policies, when what is needed is serious effort to ensure that issues are fully grappled with, and the 2014 Act works properly, as was intended."

The 2014 Act is a good piece of legislation. Does the Minister agree with that?

The number of families seeking help has surged by 11%. The National Audit Office has said that children with special needs are being marginalised. The rise in the number of special needs pupils forces them to travel out of area to school, while, as the noble Lord, Lord Addington, said, schools are failing to diagnose 80% of dyslexic pupils. That is shocking. The British Dyslexia Association has said that diagnosis and support for such children is the worst it has seen since government funding started in the 1980s. According to the Department for Education, out of 8.7 million schoolchildren in England, it is estimated that 870,000 have dyslexia, but fewer than 150,000 have been diagnosed.

Every school needs to employ specialist teachers because the human cost of dyslexia in terms of the emotional and psychological impact on poorly supported dyslexic children is high. A report by the all-party parliamentary group for dyslexia, supported by the British Dyslexia Association, has said clearly that 95% of parents feel that they lack the knowledge and skills to deal with this situation. Some 70% of parents feel that schools do not support their dyslexic children. The association has recommended specialist support in each school; training for classroom teachers; adequate pastoral, academic and mental health provision; adequate, accessible information for parents; and that schools should invest in training and resourcing so that they meet the standards and ensure coherent national frameworks.

As Helen Boden, CEO of the British Dyslexia Association, has said:

"The human cost of dyslexia is too high, and we need to change that."

8.13 pm

Lord Mann (Non-Afl): My Lords, for nearly 20 years I represented primarily former coalmining families in the so-called red wall. The first thing I was told in a school when I went there after I was elected was, "You shouldn't expect too much of these kids because they are pit fodder"—as their fathers, grandfathers and great-grandfathers had been. When I represented the fathers, grandfathers and great-grandfathers in industrial injury compensation claims where they had been done over by both their unions and their solicitors, I discovered a strange phenomenon. It took me a few months to grasp it. Every old miner who had come to see me would arrive with a daughter. Initially I thought that it was just for comfort, assistance and advice, but the obvious quickly dawned on me. They brought their daughters along because they could not read. My own grandfather could read but he could not write because he was left-handed and he was not allowed to write. He never wrote a thing. I do not know how he filled in his postal vote form or wrote out cheques because he never signed his own name. The problem is intergenerational.

When thinking about the success or not of the 2014 changes, let us not kid ourselves that the situation before then was better, because it was not: it was far worse, and it has not improved anything like as much as it needs to. The condition manifests itself in schools through behavioural problems. People did not say that their son or daughter could not read something or that they had special educational needs like the middle-class families did. You could identify where they came from by the school. In the mining villages, they would be expelled from school at 14 for behavioural problems. They had problems with the police and they could not get a job, so it was rather late in the day. Without question, my biggest failure was not to tackle this concept of special educational needs and what should be done about it.

I have drawn two conclusions about it. The first is that for the majority of children, having simplified, well-structured systems with good discipline—the kinds of things that the academies in the area I live in have been doing very successfully—improves their outcomes. But not all children are the same and the minority end up being excluded, as others have outlined. Children are being excluded in large numbers and it is always because of behavioural issues, but what lies underneath that is the fact that they do not have the core skills they need. If you have ADHD or dyslexia, that is a gap in core skills which needs to be addressed, and if it has not been addressed, it is patently obvious. The parents may have had the same problems and cannot articulate them. Actually, I found that there would often be a clash between the parent and the school because the school did not understand where the parent was coming from, so the problems were exacerbated even more. Not all children are the same in terms of education. That is a fundamental if we are to have the workforce we need post Brexit to meet the skills requirements of the country.

There is a second thing that the Government should think about. It was a big breakthrough to get the Law Society to redefine vulnerability. There has been some success, but not as much, with the Financial Conduct Authority and the Financial Ombudsman Service. Adults who cannot read and write cannot deal with the paperwork that is put in front of them by people in financial services. That is a vulnerability which means that when there is mis-selling, that vulnerability should be quantified as an issue that should have been pre-identified. If that is done, fairness in the system will be greater for all, and I would strongly recommend that to the Government.

8.18 pm

Lord Sterling of Plaistow (Con): My Lords, the noble Lord, Lord Addington, splendidly keeps up a steady drumbeat of persuasion which, together with those of us involved in autism issues, has resulted in considerable extra support from Governments. Perhaps I may say to my noble friend the Minister that that support is much appreciated.

As I said in a recent debate, all the manifestos of the political parties stated strong support for those in our communities who have disabilities. I agree totally with all of the key points made by the previous speakers. I share the strongly held view of the noble Lord, Lord Addington, regarding the advantage to the taxpayer if these issues are understood fully in every school in the country. From head teachers to specialists, all teachers should be trained so that they are able to notice the early signs of dyslexia or autism in a child, which can then be passed on to the trained teacher. Early detection is absolutely key, to be followed up by the necessary support. Going through mainstream schooling plays a huge part in a disabled child's ability to contribute as a member of society and gain that wonderful feeling of quiet self-esteem.

What is the reverse side of the coin? It is hopelessness, a feeling of failure and of not being wanted, neediness and increasing anxiety, leading to increasing mental health problems and, in many cases, early death. What is often forgotten is that no child with a disability is on their own. Parents, grandparents, siblings, friends and carers play a crucial part in their lives; but probably the mothers play the key, devoted role after experiencing huge personal stress and, often, break-up of the marriage. I suggest that strong action would now be right. The right financial support would transform the lives of many millions of people, as well as those of disabled young people. We have the empathy: let us do it now. To borrow Motability's strapline, let us put disabled people and their families on the road to freedom.

8.21 pm

Lord Storey (LD): My Lords, I was very interested in the comments of the noble Lord, Lord Mann, because when I first started teaching in a place called Prescot, near St Helens, pupils who had behavioural problems or learning difficulties were referred to as "the remedials" and were pushed aside from the rest of the children. We have come a long way since then, thank goodness. I want to start by recognising the progress we have made in special educational needs in general, and dyslexia in particular. It is through the rugged determination of parents and numerous organisations, and their constant tenacity, that we have seen the progress we have made thus far. Speaking of rugged determination, one need look no further, of course, than my noble friend Lord Addington, who has secured this debate; we thank him for that.

If we go back 10 years or so, it was a very different state of affairs. Now, we have qualified special needs co-ordinators in our schools; whether they have the time to do the job properly, given their timetable commitments, is another issue. Many noble Lords have referred to the education, health and care plans, which were a really important development. Sadly, we did not realise at the time that their success in identifying special educational needs almost created an unsustainable situation. It was at a time when schools did not have many resources; schools and local government were facing huge financial problems. Parents felt let down, of course, when the appeals system became clogged up as well. We must ensure that those resources are there now for the education, health and care plans.

Two statistics really shocked me, and they have been mentioned already: 52% of teachers said they had no training in dyslexia; and, as my noble friend Lord Addington and the noble Lord, Lord Bilimoria, mentioned, schools in England are failing to diagnose at least 80% of children who have dyslexia. Those are frightening statistics. Let us put this in perspective: 10% to 15% of children are dyslexic; 14.9% of our pupils have special educational needs; and 3.1% of our pupils are on education, health and care plans. We need to sort out all that potential and talent among young people. As a number of noble Lords have said, the earlier we do it, the sooner we can sort those issues out. It is a sad state of affairs that £100 million a year is spent by local authorities in legal fees, fighting the parents who want dyslexia support for their child. Imagine if we used that £100 million in schools: we would be able to solve many of the problems that have been discussed. Talking about schools, I was asked by the noble Lord, Lord Lexden, to go to Maple Hayes School and I thank him again for doing that. I actually learned a tremendous amount and was very impressed with that school.

Most teachers still get little or no formal training in addressing learning difficulties. Most teaching courses include options on teaching children with special educational needs—but notice the word "options": it is not compulsory. What do we need to do now? As the noble Lords, Lord Sterling and Lord Bilimoria, have said, we need to spot this early on. We need to make sure that schools have resources for special educational needs. Some schools are facing financial difficulties and then have to find £6,000 for diagnosis and support, which leads to delay and excuses, and that is just plain daft. All training of teachers—whether at college, university, teachers-direct or Teach First—must have mandatory components on special educational needs. Teachers need to be able to recognise learning difficulties and there needs to be CPD in all our schools: the British Dyslexia Association has suggested 30 hours. The BDA has suggested that dyslexic assessors train teachers to spot signs in the classroom. I am not completely convinced about this; if you released time

[Lord Storey]
for the special needs co-ordinator and trained teachers, that would not be necessary.

I hope that the rugged determination shown by your Lordships—my noble friend Lord Addington in particular—and the various associations will continue until we get this issue right.

8.25 pm

Lord Watson of Invergowrie (Lab): My Lords, I pay tribute to the noble Lord, Lord Addington, for the huge amount of work that he undertakes on behalf of people of all ages with dyslexia, of which securing today's debate is merely the latest example. He speaks with great authority on the subject, of course, something of which I am sure the Minister will be aware.

Children affected by neurodiverse conditions are entitled to extra support in schools, but all too often these children and their families do not receive support they need to enable them to make the most of their life in general and their educational experience in particular. Not only does the £700 million of extra funding for SEND announced by the Government last year fail to reverse the funding cuts of recent years, it is less than half the amount that the Local Government Association says is needed annually for special needs and high-needs education.

Schools find it increasingly difficult to support SEND pupils due to the loss of learning support assistants and teaching assistants resulting from general school funding cuts, increased class sizes, long waiting times for SEND assessments, and the workload of special educational needs co-ordinators. Parents without the resources to obtain their own assessment often regard an education, health and care plan as the only way to get the support their child needs. Yet to achieve even an assessment of the child by a local authority—far less receive an EHC plan—takes on average more than a year: that is time wasted in which the child has continued to underachieve, lost interest or perhaps even given up on their learning.

This has led to the almost inconceivable situation whereby councils pay almost as much in legal fees to avoid EHC plans as it would cost to provide and support the plans themselves. As highlighted by the noble Lord, Lord Addington, councils lose 90% of the cases at the First-tier Tribunal when challenged, which surely underlines the futility of their stance. I am reluctant to blame local authorities, given the funding situation in which they have been placed by successive Governments.

Last year, Ofsted highlighted that even when a child has been assessed, they still struggle to access the services and support they need. In 2018, more than 200 children with a statement or EHC plan were awaiting provision—almost three times the figure in 2010. Amanda Spielman said:

"One child with SEND not receiving the help they need is disturbing enough, but thousands is a national scandal."

That was Her Majesty's chief inspector speaking, which should have caused great alarm in the DfE and among Ministers. Did it? A year later, the picture has not improved.

My noble friend Lord Touhig spoke, as he always does, with passion and panache on autism, which is the most common type of special educational need for children who have an EHC plan or statement, with 27% of these children having it as their main need. Despite these numbers, too many children on the autism spectrum are held back from getting the support they need to succeed, and 43% of appeals to the SEND tribunal are on behalf of these children.

The British Dyslexia Association has outlined policy changes to noble Lords that it believes are required for young people with dyslexia. Many GCSE and A-level exams still test pupils' communication skills through a written exam, awarding marks for spelling, punctuation and grammar, or SPAG as it is known. This was also referred to by the noble Lord, Lord Addington. This system is particularly disadvantageous to young people with dyslexia, who are marked down for a skill that can be easily managed in a modern workplace. Will the Government consider whether SPAG marks are the best approach to assessing communication skills for the modern workplace?

As the noble Lord, Lord Storey, said, awareness-raising of SEND issues in initial teacher training is simply not adequate to equip newly qualified teachers with the skills necessary to support SEND pupils in a classroom setting. The recently introduced ITT core content framework fails to give clear guidance on the amount and standard of training on SEND. It would be helpful to have an explanation from the Minister as to why the Government decided not to make the changes that the sector had asked for when the current approach is failing newly qualified teachers and young people with SEND.

In the short time available, it has not been possible to speak about other neurodiverse conditions, but that is not to ignore or disrespect the issues associated with dyspraxia, dyscalculia, ADHD or Tourette's. We await the publication of the Government's SEND review. On Monday in another place the Secretary of State said:

"We are very happy to look at any suggestions … because as part of our special educational needs review we are trying to see how we can best deliver these services for the benefit of every child."—[*Official Report*, Commons, 2/3/20; col. 606.]

I welcome that, because it suggests that the Government are planning more than just changes to the funding regime—possibly even structural changes. I say to the Minister that both are required if SEND children and their parents are to receive the support that they need and have a right to expect.

8.31 pm

The Parliamentary Under-Secretary of State, Department for Education and Department for International Trade (Baroness Berridge) (Con): My Lords, I join other noble Lords in paying tribute once again to the noble Lord, Lord Addington, who is a noted champion of neurodiversity. I thank him and other noble Lords for their speeches this evening on this important topic.

The attainment gap that we are dealing with here is a very serious issue. It is the Government's ambition that every child should have access to a world-class education of the type that the noble Lord, Lord Bilimoria, outlined. Therefore, it is clearly important that all children with special educational needs and disabilities—I

will use the acronym SEND—including dyslexia and other neurodiverse conditions receive appropriate, high-quality support so that they can achieve well in their education and future lives.

I agree with my noble friend Lord Sterling that early detection is important. He referred to these children being in mainstream education. That is enshrined in law, and we are concerned that an increasing number of those with EHC plans—about 50%—are now in special provision.

As noble Lords will remember, in 2014 we introduced major reforms to the SEND system. I am grateful to the noble Lord, Lord Mann, for his humble recognition that, prior to these reforms, the situation was far from perfect and there have been improvements. This was part of the focus to deliver that world-class education for all our children. Our ambition was to establish a multiagency, person-centred system, from birth to the age of 25, that identified children's needs early and focused on progress and outcomes.

These reforms gave vital support to more children, but, as has been recognised in your Lordships' House, the problems they sought to address were complex and of long standing. For too many, the vision of the Children and Families Act is not yet a reality. On that score, I agree with many of the comments from the noble Lords, Lord Watson, Lord Addington and Lord Bilimoria. The vision that we set, on which there was a lot of cross-party support, has not become a reality for too many families.

That is why officials are working across government to review the SEND system. To assure the noble Lord, Lord Watson, it is a full, root-and-branch review. They are looking at ways to ensure the system delivers the high-quality, consistent support that should have been delivered by joining up health, care and education services. To that end, the Department of Health and Social Care and NHS England are working closely with my department. They are working at pace, but these are complex issues. I am sure noble Lords would agree that it is more important to address them fully and get them right than to do so quickly. We welcome the scrutiny and challenge provided by the reports from the Education Select Committee and the National Audit Office, which will be taken into account in the review.

While the review is ongoing, we are continuing to build on what is working and improve what is not. I am pleased that the new Ofsted/Care Quality Commission inspection regime, which we introduced in 2015, has identified some really strongly performing areas, such as Portsmouth, Calderdale and Wiltshire. We also see improvement in areas that were initially found to have weaknesses, such as Middlesbrough, which recently had a strong revisit from the inspectors. These areas will have positively impacted on the experiences of the children and young people that we have talked about this evening, but I accept that this is a patchwork situation and we need to look at consistent provision across the country.

At the heart of the reforms was co-production, to ensure that children and young people with SEND and their parents and carers felt genuinely empowered, as my noble friend Lord Sterling pointed out in relation to parents' involvement. Although I know that there are challenges around parental confidence in the system, as the noble Lord, Lord Bilimoria, mentioned, there are some fantastic examples of co-production in action. In Warrington, Ofsted and the CQC found that families are becoming increasingly influential in the design and implementation of plans and services across that local area. However, I accept that there is a patchwork nature to this provision.

To support this co-production, we are funding parent carer forums in every local area to ensure that they play a greater role in designing and commissioning local services. It is wonderful to hear of the role that noble Lords have played as parents to ensure the provision for their children and relatives. We are prioritising working with parents as the review progresses. The new Minister for Children and Families has already met parents to hear about their experiences.

We recognise the financial pressures that educational establishments and local authorities face. We are responding to this by investing £14 billion more in schools over the next three years to 2022-23, the biggest funding boost for a decade. This includes an additional £780 million to meet high-needs funding in 2020-21. Other years will be referenced in due course. This should support those with some of the most complex needs. It is a 12% increase in funding from the previous year, bringing the total high-needs budget to over £7 billion, to answer the queries from the noble Lords, Lord Addington and Lord Watson, about the funding that is going into this matter. We have also invested a total of £365 million in expanding and improving special provision from 2018 to 2021 and opened 43 special free schools, with a further 48 in the pipeline and 37 currently being assessed.

In reference to the points made by my noble friend Lord Lexden, there is excellent provision in the independent sector. As I understand it, when an EHCP says that that is the specific provision for that child, the local authority should be delivering it, but we need to have those special places within the state-funded system so that they are available without having to go to the independent sector. However, the Government accept that additional funding will not in itself be sufficient to address pressures on the system, which was a theme of many noble Lords' speeches. We must ensure that funding is spent fairly, efficiently and effectively, and that the support available is sustainable in the future. We are talking about young people's lives, so it must be sustainable.

We are intent on avoiding the situation referenced in the moving story told by the noble Lord, Lord Mann. There are manifesto commitments regarding alternative provisions, but we need to avoid the scenarios that he described by having better provision and better support through EHCPs, and special educational needs support within schools, which is available to many children. About 11% of children are having that support but do not have an EHCP.

To answer the noble Lords, Lord Touhig and Lord Addington, and other noble Lords, obviously the school workforce is a vital part of delivering this support, and workforce development is critical to closing that attainment gap and ensuring that children and

[Baroness Berridge]
young people with SEND fulfil their potential. Qualified teacher status is awarded to new teachers only if they can show appropriate teaching approaches to meet pupils' individual needs. There are SENCOs in each school, each with a master's-level qualification, and should be at least attaining the specific SENCO qualification. There is more to do in relation to this, but there are examples of good practice where special schools and mainstream schools in certain areas are working together to share best practice, to upskill the workforce within the mainstream, because most children with special educational needs are within the mainstream system.

We have worked with SEND sector organisations to develop resources to assist with the early identification of and support for children with SEND, including neurodiversity. As I am sure the noble Lord, Lord Addington, is aware, these resources are available on the SEND gateway. Between April 2018 and March 2020, we have provided £3.9 million to the Whole School SEND Consortium, to support schools to embed SEND into school improvement and equip the workforce to deliver high-quality teaching across all types of SEND. As many noble Lords will be aware, the consortium includes the British Dyslexia Association and the Autism Education Trust. Through a specific contract with the Autism Education Trust, we have trained up over a quarter of a million teachers, but I recognise that there is more to do.

On the vexed issue of off-rolling, mentioned by the noble Lord, Lord Touhig, in relation to Ofsted, this is a stronger part of the new framework for Ofsted. There is a strength and focus around this issue. We do not want to see this practice happening. There are now examples of schools in which Ofsted have identified this practice and therefore the school is requiring improvement, or is inadequate, as a result of off-rolling. This is a practice that the Government do not want to see happening. Regarding exclusions, we must not be nervous about saying that there are certain groups more likely to be excluded. We must address this. It is also a matter that is part of the inspection regime.

Many noble Lords raised the issue of appeals, and this is quite a nuanced issue. Yes, there is a high rate of parents being, to some degree, successful in those appeals. The percentage remains stable at around 1.6%, but because the number of plans has gone up, the number of appeals has been rising. That situation will be part of the review.

The noble Lord, Lord Addington, referred to assistive technologies. We recognise their potential to support pupils with special educational needs including dyslexia. Our edtech strategy, which was launched in April 2019, has identified accessibility and inclusion as one of five key areas of opportunity where technology can help drive a step change in support for these pupils.

On the point raised by my noble friend Lord Sterling, in our manifesto we have also committed to publishing a national strategy for disabled people before the end of this year. We are exploring multiple options for how we approach this, to ensure that there is a positive impact on disabled people across the country.

In relation to specific questions regarding the percentage of marks in certain qualifications for spelling and grammar, I will talk to my colleague, the right honourable Nick Gibb, about school standards, to fully understand how that might be impacting this group of students.

We are committed to improving the educational outcomes of all children and young people with special educational needs. The SEND review is an absolute priority for the Government. Debates such as the one we have had this evening are important for gathering information and views on the system. I am grateful for it and hope that noble Lords will continue to hold our feet to the fire. I expect to see much more of the rugged determination of, particularly, the noble Lord, Lord Addington, as we deal with matters that are so important to so many young people. We all wish to see a rapid closure of the attainment gap. It is a waste of talent if young people cannot access the support they need to fulfil their potential.

8.44 pm

Sitting suspended.

Fisheries Bill [HL]

Committee (2nd Day) (Continued)

8.46 pm

Debate on whether Clause 6 should stand part of the Bill.

Baroness McIntosh of Pickering (Con): My Lords, I do not propose to debate this at any length. When I tabled my opposition to Clause 6, I had not appreciated that my Amendment 49A, which we debated earlier, would have had the chance to have been debated today.

I am especially grateful that my noble friend the Minister has said that we can have a further discussion on the question of fisheries management plans. That would give me the opportunity to explore many of the issues. Therefore, I do not wish to pursue this, other than to say that I stand by the comments I made earlier that, in terms of stock levels and controlling the biomass, it is not sufficient to look at it purely in terms of sustainability. We need to look at the biomass in terms of maximum sustainable yield. We will have an opportunity to discuss that next time.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am glad to have the opportunity to set out the intentions of the Government in this new provision in the Bill to produce fisheries management plans. We have already discussed various aspects and provisions of the plans, and I take this opportunity to highlight the fact that the requirement to produce these plans was not included in the previous fisheries Bill. Inclusion of this requirement demonstrates the Government's commitment towards securing sustainable stocks and meeting the manifesto commitment on the matter. Fisheries management plans will help the United Kingdom's aims to recover and maintain fish stocks to

healthy levels, ensure we fish sustainably and offer the flexibility in our management approaches to deal with our complex fisheries.

Clause 6 requires the UK fisheries administrations to produce fisheries management plans as described in the joint fisheries statement and sets out the detail of what these plans must contain. The plans will directly contribute to the fisheries objectives in Clause 1. They will set out the detailed fisheries conservation measures necessary to manage specific fisheries and fish stocks. Each plan will set out the geographic area that it covers, the stock or stocks covered, and how its effectiveness will be monitored and reported.

Where we do not have enough scientific evidence to assess a stock's MSY, the administration or administrations must include the steps they will take to obtain the scientific evidence required to establish sustainable harvest limits or explain why they do not intend to do so. This might, for instance, be if scientific advice indicates that a suitable proxy measure for assessing a stock's sustainability can be used instead. For example, such an approach is used for North Sea lemon sole, which is a data-limited stock. A precautionary buffer is applied based on advice from the International Council for the Exploration of the Sea.

As I have said, I am very happy to have what I would call as technical a meeting as your Lordships wish it to be on the fisheries management plans. These plans will be the backbone of the technical aspects of fisheries management policy in the future. However, for this evening, I hope that my noble friend feels happy not to press her opposition to the clause.

Baroness McIntosh of Pickering: As I said, I am happy not to pursue this matter.

Clause 6 agreed.

Clause 7: Fisheries management plans: power to depart from proposals in JFS

Amendment 59

Moved by ***Baroness Jones of Whitchurch***

59: Clause 7, page 7, line 34, leave out "include (in particular)" and insert "are limited to"

Member's explanatory statement

This amendment changes the list of changes in circumstances which are capable of being "relevant" from indicative to exhaustive.

Baroness Jones of Whitchurch (Lab): My Lords, the amendments in this group are tabled in my name and that of my noble friend Lord Grantchester. They are, in the main, probing amendments. They follow on from the earlier group of amendments and concern the scope of powers to amend or depart from proposals in the joint fisheries statement.

As it stands, the Bill allows the fisheries policy authorities to depart from proposals in the joint fisheries statement if there is a change of circumstances. It goes on to say that the changes of circumstances include, but are not limited to, international obligations, actions by a territory outside the UK, scientific evidence, and evidence relating to the social, economic or environmental objectives. Amendments 59 and 72 tighten up that wording so that those are the only reasons for agreeing a change of circumstances, the reason being that quite a wide scope for change is already given in the joint fisheries statement, which is envisaged to be a longer-term planning document rather than one constantly under revision. Therefore, we believe that the original wording is too loose and could allow other, extraneous factors to come into play.

Our Amendment 60, in the name of my noble friend Lord Grantchester, goes one stage further and removes international obligations altogether as a reason for a change of circumstances. Our concern is that the negotiations with the EU 27 and other external coastal fishing areas will be taking place this year and in future years, and those international obligations could be used as a reason to revisit the joint fisheries statement and abandon our commitment to the sustainability and climate change objectives and the other important objectives in Clause 1.

During our debates on the Bill, all noble Lords have been concerned that a good set of objectives in Clause 1 will end up being watered down by the economic pressures of the trade deals and that we will end up back at square one with something not dissimilar to the common fisheries policy, which has, rightly, been discredited. Therefore, we tabled this amendment to explore under what circumstances international obligations might be used as a reason to amend the joint fisheries statement.

Finally, Amendments 62, 63 and 73 tackle the rather vague reason for a change of circumstances being

"available evidence relating to the social, economic or environmental elements of sustainable development."

We felt that phrase could mean anything. Changes in these elements relating to fishing management will happen constantly. New reports and statistics about progress in these areas will appear regularly. At what point could this be used to promote a review of the scheme, and is this how we envisage it would work? Instead, we have proposed a much tighter phrase, which is to limit reviews of the joint fisheries statement to resulting from

"catastrophic events which have an impact on fisheries management or the marine environment."

The previous wording of the Bill did not have the reference to changes in socioeconomic circumstances as a reason for non-compliance with the JFC. Instead the Explanatory Notes listed catastrophic events as a reason for revisiting it, so we have taken this wording and added it to this version of the Bill. Does this not make more sense? Obviously we do not want to put a complete straitjacket on the wording of the JFS, but those drawing up fisheries management plans and those employed in the industry need certainty to plan and invest, otherwise there is a danger of constant lobbying to change the provisions and much confusion among those tasked with implementing the plans.

I hope noble Lords will see the sense in what I say, including the Minister. I therefore beg to move.

Lord Teverson (LD): My Lords, I very much welcome these amendments and support them. I have put my name to Amendment 62, which is about my genuine concern—I will not go over it again at this time of the evening—that somehow social and economic elements will be used to trump a sustainability issue, even if it is not the will of the present Government or of the Minister. It just makes me uncomfortable, and I would

[Lord Teverson]
much prefer this whole area to be tighter, as with the other amendments put forward by the noble Baroness, Lady Jones of Whitchurch, which she has explained. It is coming back to this area again of ensuring that we do not prejudice the long term by making life easier politically in the short term.

Lord Gardiner of Kimble: My Lords, I am most grateful to the noble Baroness and indeed the noble Lord for the points they have made. This gives me the opportunity to set out the reasoning behind the ability of fisheries policy authorities to diverge from policies in the joint fisheries statement and from policies in the fisheries management plan, in the narrow circumstances where relevant considerations apply, and to take a different approach for stocks for which it would not be appropriate to gather data to calculate their MSY.

Starting with Amendments 59 and 63, it is clear that fisheries management plans will need to evolve over time to retain their efficacy and feasibility. While the list presented in the clause in question covers some of the major changes that we could predict might take place, other circumstances may bring to light fundamental factors to consider in updating fisheries management plans. This legislation aims to be future-proof and flexible enough to allow dynamic, evidence-based policy-making.

The premise behind this amendment is that the fisheries administrations could use this clause to somehow water down plans. However, it would also hinder their ability to strengthen plans in the light of changing circumstances. It would limit those circumstances under which fisheries administrations might consider amending, revoking or developing new fisheries management plans, or to set out a plan described in a different way from that initially proposed in a joint fisheries statement, to one or more of four exclusive reasons that we believe will severely limit their ability to react to new or emerging issues. Furthermore, preventing fisheries administrations making use of new economic, social or environmental evidence as a trigger to amend or replace fisheries management plans, and by inference informing the development of new fisheries plans, is contrary to the core principle of evidence-based policy-making.

The amendment proposed by the noble Baroness puts the threshold for using evidence at that relating only to "catastrophic events", which would seem extremely high and to relate, one hopes, to very rare occasions. I have reflected on this and feel that it would mean that fisheries administrations would have to wait to react to events, rather than be proactive and use all new evidence potentially to head off a catastrophic event. I am concerned that the amendment creates an unacceptable risk that our fisheries administrations would be unhelpfully bound by what was foreseen as necessary at the point at which the joint fisheries statement was published, rather than having the flexibility to react to changing circumstances or moving stocks that could result in environmental, economic or social harm that was not yet catastrophic.

9 pm

I am grateful to the noble Lord, Lord Grantchester, for his probing Amendment 60, introduced by the noble Baroness, as it gives me the opportunity to reaffirm that our international obligations are fundamentally important to the United Kingdom and will become even more crucial now that we are an independent coastal state responsible for our actions. The existing clause will ensure that fisheries management plans can evolve with our growing international ambition for the wider environment, as well as fisheries, and be a tool to help us meet our obligations. We need to have the flexibility to make changes to accommodate new international agreements in the future. This amendment would tie us to having fisheries management plans that might be in contravention of our international obligations in the future, which I am sure is not a situation that the noble Lord or any of us would wish to end up in.

I turn to Amendment 62, which seeks clarification as to why the inclusion of the three pillars of sustainable development are a relevant circumstance to trigger changes to fisheries management plans. I have set out in some detail already the importance of being able to respond flexibly to events beyond our control, but I would like to give a little more detail. We have committed to taking an ecosystem approach to fisheries management whereby the impact on humankind, and vice versa, is a fundamental principle for consideration. Social, economic and environmental evidence is central to our implementation of a new, progressive approach to fisheries management. As I have set out, this amendment would curtail responsive, evidence-based policy-making based on using the best available scientific evidence—a commitment made through our scientific evidence objective in Clause 1.

I turn now to Amendments 72 and 73, which aim to narrow the relevant circumstances for authorities to diverge from policies set out in the fisheries management plans, joint fisheries statement and Secretary of State's fisheries statement. As I have highlighted already, the UK Government believe that there are good reasons for retaining this degree of flexibility, while maintaining the premise, as set out in the clause, that the national fisheries authorities are required to pursue the policies outlined in the relevant fisheries statements or fisheries management plans, as applicable to them. I will not repeat all the detailed arguments made and discussed earlier, but simply note that overly restricting the circumstances in which fisheries administrations may depart from policies could inappropriately limit their ability to react to those new and emerging issues. The safeguards in Clause 10(2) set out that, if there is divergence due to a relevant change in circumstances, the relevant fisheries administration would publish a document describing the decision and the relevant change of circumstances, as well as explaining how the relevant change in circumstances affected that decision.

I have spent a little time on this and used words such as "flexibility". This is all part of addressing our concern that we need—and our stance is—to be proactive in seeking what we all seek, which is sustainability. Although I agree that the amendments are well intentioned, they could make it more difficult to do all the things we want to do. I hope that the noble Baroness feels able to withdraw her amendment.

Baroness Jones of Whitchurch: Before the Minister sits down, may I ask a simple question: does he think that the phrase "international obligations" means international negotiations such as I described, which would include the ongoing regular annual negotiations? Or do "international obligations" cover some wider commitment to international law? If that phrase means the former—the negotiations that go on from time to time—that is quite troubling, because that is where we got into difficulties with the common fisheries policy and other issues. We had our own sustainability principles, and then we traded them away, because that was the outcome of the trade negotiations. Before I comment more widely on what the Minister has said, I am just wondering what that phrase means.

Lord Gardiner of Kimble: So that I am not anything other than very clear with the noble Baroness, I shall read from the Bill: in Clause 48, on interpretation, an

"'international obligation of the United Kingdom' includes any obligation that arises or may arise under an international agreement or arrangement to which the United Kingdom is a party".

That is the definition.

Lord Teverson: Does that include the 5,000 agreements that the Minister talked about in order to negate one of our earlier amendments?

Lord Gardiner of Kimble: I think I am consistent, in that there are many treaties that do not relate to fisheries, and I am consistent in saying that this is in relation to our international fisheries obligations. With the other amendment that we discussed, the drafting could have involved us in all the 14,000 treaties—I think it was 14,000—whereas here I believe it is distinctly involved in and engaged with the arrangements for fisheries within our international obligations.

Baroness Jones of Whitchurch: Just to pick up on that point, the definition to which the Minister has pointed us is about international agreements or arrangements

"to which the United Kingdom is a party".

That could mean anything or everything that we deal with and negotiate on an international basis, and it continues to raise concerns about the outcome of those negotiations, and whether such considerations will trump our more aspirational objectives, which we agreed in Clause 1. We may come back to that. I continue to have a sense of disquiet about the implications —as I do about the phraseology around the word "socioeconomic", which we shall not bottom out now; we have debated it several times. However, I agree with the noble Lord, Lord Teverson, that we are in danger of trading the long-term benefit to the marine environment for short-term advantage. Whatever the good will of the Government may be, some of that practicality and necessity will, sadly, get in the way of some of our more profound objectives.

I listened carefully to what the Minister said about the other factors. He talked about dynamic policy-making and reacting to new emerging issues. It just feels as if this will be a moveable feast and will not provide the stability that the fishing community and the devolved Administrations would welcome. I am worried that the wording provides a little too much flexibility.

I quite like the "catastrophic event" phrase: it was the Government's phrase in the first place, and I just quoted it back. I would have thought there was some merit in adopting it anyway, because such things will be factors. There could be extreme weather changes, or other circumstances could have an impact that the Government would want to respond to, but which would not be covered under the other terminology in the Bill. This is all a bit unsatisfactory, but obviously I am not going to pursue it at this point, so I beg leave to withdraw the amendment.

Amendment 59 withdrawn.

Amendment 60

Tabled by ***Lord Grantchester***

60: Clause 7, page 7, line 35, leave out paragraph (a)

Member's explanatory statement

This amendment removes paragraph (a) to probe whether the powers to amend or revoke a fisheries management plan can be used to implement the outcome of negotiations with the EU27.

Lord Grantchester (Lab): If I may detain the House for a quick moment, I thank my noble friend Lady Jones of Whitchurch for pursuing this issue further with the Minister. I refer back to the probing done by the noble Lord, Lord Lansley, on how far Ministers in the Department for International Trade will be abiding by the objectives mentioned in the Bill in their negotiations over fisheries trade with the EU. I just make that point, and I look forward to the Minister's letter in that regard.

Amendment 60 not moved.

Amendments 61 to 63 not moved.

Clause 7 agreed.

Clause 8: Fisheries management plans: procedure

Amendment 64

Moved by ***Lord Teverson***

64: Clause 8, page 8, line 31, after "means" insert "an English advisory board and"

Member's explanatory statement

The amendment brings an element of devolution into England's fisheries plans, and introduces consultation with fisheries' stakeholders.

Lord Teverson: My Lords, I repeat my declaration of interest as co-chair of the Cornwall and Isles of Scilly Local Nature Partnership, as one of my amendments mentions local nature partnerships.

I was grateful to the Minister for his letter of 4 March, which I think was to the noble Lord, Lord Cameron. In the passage dealing with "Stock definition areas", the Minister stated:

"One of the matters the Department will consider is whether and how it could take a more regionalised approach to quota management."

[Lord Teverson]
I welcome that statement very strongly. One of my aims with this group of amendments is to try to understand what is in the Minister's, and indeed the Government's, mind.

We are constantly reminded that the Bill has been knitted together by the various devolved authorities along with Defra and the Secretary of State. That is great: the devolved authorities can go off and agree their authority in terms of how fisheries management works. However, in England we do not have devolution at all; the whole of England is treated as one. I feel strongly that that advantage of devolution in the rest of the UK should be allowed to happen within England as well. I do not see why England should be at a disadvantage here. There are very different fisheries; even within south-west England there are significant differences, let alone further along the south coast, and certainly once you get to the North Sea. There is a very wide range of fisheries, and there will be a very wide range of fisheries plans.

I am sure the Minister will be able to pick holes in this amendment in all sorts of ways, but what I am trying to say is that there needs to be a method of devolution within England around fisheries management in how the industry operates that goes beyond bog-standard consultation, which, to be honest, is very limited in its effect on the way that it works. What I have suggested—I am not saying that this suggestion is perfect; I am just looking to the Government to take the issue seriously and come back to what has been suggested in that letter—is a way to a devolved situation.

I suggest that the major ports should have an advisory board—I am not saying that it should be an executive board, so I am being very modest in my aspirations—that should be able to have a major influence over the management plans. In fact, in many ways the advisory board should be the initiator of the local or regional strategy. It should then meet to go through the issues and make suggestions to the Secretary of State before the draft management plan comes out. When the draft management plan has been produced, the advisory board would then have a second bite at considering that and making recommendations. This is a process, and the amendment is very process driven.

I am trying to present a possible model of a way to involve and get expertise in a real sense—not just in a passive consultation—to make sure that these management plans are workable, have real buy-in from those that are affected by and have to operate them, and include the organs of the state, whether it be Natural England, the MMO or Defra. These should be able to participate in the process as well.

I am looking for the Minister to set out how we are going to achieve this in England. This will makes a difference not just to the fishery but also—as we have talked about so much—to the local communities, particularly coastal communities, which are affected. This allows that wider dimension to affect the local benefit of these fisheries plans.

One of the possible methods of devolution is already established. IFCAs are already responsible for management in quite a broad sense, not just in fisheries but in conservation more generally up to the six-mile limit. There are local fisheries all along the English coastline that operate within the six-mile limit. These organisations are already well represented by stakeholders, from local authorities, NGOs and the fishing community. Could we not use them to be able to have a strong power—in fact, executive power is what I am suggesting—over their own local fisheries? By doing so I believe we will have much greater buy-in and much more effective management plans.

I am not sure what the principle of this Government is regarding devolution at this stage, but I get the impression that they are keen to push power downwards where appropriate. I feel this is an area where that could be done successfully, but I stress again that this is a model and not necessarily the definitive answer. I beg to move.

Lord Cameron of Dillington (CB): My Lords, I support the amendments in this group, particularly Amendments 98 and 99. It is an interesting idea to have the IFCAs involved in determining fisheries' opportunities.

There does not seem to be much respect for the MMO among smaller fishermen. In our committee last year, for instance, we heard complaints that it tended to take a short-term view of micromanaging individual small fishermen's quota—that is, the quota for the under-10 boats. As opposed to issuing an annual quota, which would let them decide when and how they should be managed, the MMO issued weekly or monthly quotas, which did not go down well.

Since then, I have spoken to fishermen operating in Cornwall, south Devon and south Dorset. While I have no sense of the veracity of what I heard, it is clear that respect is pretty low. One said: "The MMO do short term quota fixes, sometimes on a daily basis. People go out and come back and find their quota has changed." Another said: "With the new catch app, a skipper has to compulsorily weigh up his 20 species of fish before he lands, while meanwhile the coastguard says, 'Do not work the app while steering your boat.' Who do you obey?". The last one is pretty damning—again, I am just repeating quotes; I have no idea about the truth of them—"The MMO is always looking for ways to prosecute the under-10s industry, which is already on its knees."

As I say, I do not know where the blame lies for the breakdown in communication and trust, but clearly something needs to change. It might be worth looking at the more democratic and wider interests of the IFCAs—as the noble Lord, Lord Teverson, was saying—to see whether they could be involved in the setting and monitoring of the inshore fleet quota.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support the amendments in this group, which are linked and would bring transparency and accountability to the process, as set out clearly by my noble friend Lord Teverson. As he said, in the absence of devolution in England, setting up an English advisory board would allow consultation on England's fisheries plans with fisheries stakeholders.

On our first day in Committee, we heard much about the consultation that has taken place with the

devolved Administration and the agreements reached with them. Some of your Lordships, including me, felt that English fishermen were being undersold. We heard that the Scottish Parliament and the Welsh Assembly agreed with the relevant clauses in the Bill, but we did not hear that the view of English fishermen and women had received quite the same input. Setting up an English advisory board and other advisory boards to oversee fisheries management plans would bring some accountability and transparency into the process and help English fisheries receive parity with their Scottish and Welsh compatriots.

The list of those to be involved would ensure that not only major fishing ports but smaller ports in a region would have a voice in how the fisheries management plans were drawn up and implemented. Although Amendment 65 is long, it is comprehensive and would ensure accountability, devolution and representation for the English fisheries. This is long overdue. I look forward to hearing from the Minister just how this might be achieved.

Lord Grantchester: My Lords, one of the puzzles in this Bill is getting to grips with the relative powers of, and interaction between, the Secretary of State, Parliament and the devolved Administrations. Into this mix, the noble Lord, Lord Teverson, has introduced a measure of devolution for England and its regions. I thank the noble Lord, Lord Cameron, for sharing his comments with the Committee.

In his Amendments 64 and 65, the noble Lord, Lord Teverson, has made a strong case for creating advisory boards for major fishing ports in England, giving the power of determination for fisheries operating within the six-mile limit to the relevant local inshore fisheries and conservation authority, and ensuring consultation with local bodies on matters that will affect them. It might even be said that, subject to consideration by the devolved Administrations, similar processes should be followed in the devolved nations.

It does not seem unreasonable for us to use this Bill to examine which level of government is best suited for the various activities and how best to ensure a level of local decision-making in England. At the very least, the Bill should make sure that in formulating policies the authorities engage properly with all relevant stakeholders, including port authorities, inshore fishers and so on.

In his Amendments 91, 98 and 99, the noble Lord distinguishes between the UK's six-mile limit and its exclusive economic zone. He quite is right to challenge the Bill on its localism provisions.

Baroness Bloomfield of Hinton Waldrist (Con): I thank noble Lords for this short debate on a topic of real interest, but I believe that we can cover elsewhere the concerns that have been raised.

I am grateful to the noble Lord, Lord Teverson, for his amendments, which would involve a proposed English advisory board and other boards in the process of preparing fisheries management plans. Such boards, as well as the IFCAs, would be involved in the determination of UK fishing opportunities. I understand the intention of noble Lords fully to involve local stakeholders in England in decisions that affect them, such as the development of fisheries management plans and determination of fishing opportunities.

The noble Lord, Lord Teverson, asked how we would achieve this. We intend to collaborate closely with local fishermen and stakeholders, who will often have the best understanding of their area. However, a statutory advisory board is not the most effective way to achieve such collaboration.

It is a long-established policy for the Government to consult widely on the use of statutory powers. Our provisions for fisheries management plans already require consultation through Clause 8 and Schedule 1. Fisheries policy authorities are required to consult with interested persons and have regard to their views when publishing the final plans. These interested persons will catch a wider range of stakeholders than those who would be required to sit on the English advisory boards according to this amendment.

I know that noble Lords are aware that fisheries management is complex. Our provisions for fisheries management plans need to have sufficient flexibility in design to ensure that we achieve our aim of fishing our stocks sustainably, wherever they live in our waters. Many stocks targeted by local fishermen in England are not restricted to their local area and, depending upon location, may be shared with devolved Administrations or neighbouring coastal states. Fisheries management plans will need to deal with specific geographic coverage of stocks. Plans must cover both inshore and offshore areas, possibly at the same time. They should not be restricted to administrative boundaries or ports.

The amendment would establish new bodies with defined formal responsibilities in the development and implementation of fisheries management plans. Public and private bodies, along with groups of individuals, would be required to field representatives to these advisory boards. The operation of the boards as set out could require a significant resource commitment from their members, and I do not think it is appropriate for the UK Government to place formal obligations on private individuals joining a board dealing in fisheries management. Local authorities would be given the responsibility to resolve any conflicts in finalising the membership of advisory boards, which seems inappropriate for a local authority.

The IFCAs already have sustainable fisheries duties under the Marine and Coastal Access Act and are required to consult formally on management measures. IFCAs produce management plans for species within their districts, working with local fishermen to achieve the best outcome. Each IFCA comprises members from relevant local authorities, general members representing local organisations, and statutory agencies. Requiring an IFCA to work with the proposed advisory board that itself will have representatives from some of the bodies on the IFCA has the potential to create conflicts of interest and operational problems. Adding this responsibility will create a further burden on the IFCAs themselves and local organisations.

The UK Government support last October's Future of Our Inshore Fisheries conference organised by Seafish. Fishermen and stakeholders discussed themes such as greater collaboration and the devolution

[Baroness Bloomfield of Hinton Waldrist]
of decision-making responsibility. I highlight that Amendment 64 as drafted would give boards statutory responsibility to prepare and publish plans. We cannot pass the responsibility for developing statutory policy that imposes legal requirements on the Government and relevant authorities to an advisory board.

Amendments 91 and 98 would include the IFCAs in Clause 24—the clause that addresses the determination of fishing opportunities—and Amendment 99 would include the advisory body as a consultee on the determination of fishing opportunities. Clause 24 sets out the duties that will apply to the Secretary of State when determining UK fishing opportunities. It does not relate to the subsequent allocation of these opportunities to the fisheries administrations or to their distribution to the fishing industry. The aim of this clause is to ensure that, as far as possible, the interests of the whole of the UK are taken into account when the UK's fishing opportunities are set.

I accept that the quota system is complex. However, enabling the IFCAs to determine fishing opportunities separately alongside the existing allocation methods could lead to confusion and inconsistency in allocation and put the UK at risk of breaching its international obligations and sustainability commitments.

If the objective is to enable English IFCAs to manage certain parts of the English quota pot, this is currently done by the Marine Management Organisation for vessels under 10 metres. The MMO manages a system of closures in English waters to help manage, for example, the cod effort in the eastern Channel. I note what the noble Lord, Lord Cameron, said about the lack of regard in which they are held. We note what was said; we have other information.

Inshore fisheries and conservation authorities play a key role in the management of inshore fisheries and can already make by-laws under Section 156 of the Marine and Coastal Access Act 2009 to limit the amount of sea fisheries resources a person or vessel may take in a specified period, and the amount of time a person or vessel may spend fishing for or taking sea fisheries resources in a specified period.

To provide reassurance around the need for statutory engagement with stakeholders in the setting of fishing opportunities in relation to Amendment 99, in England, Defra and the MMO already regularly engage fishing industry representatives, and those with a wider interest, on fishing opportunities through a number of different routes. This engagement starts when the scientific advice arrives ahead of the annual negotiations. Industry is also engaged and consulted when changes are proposed to the allocation of fishing opportunities. Engagement continues through the subsequent management over the fishing season. In the UK Government's fisheries White Paper, we committed to additional quota gained through negotiation being allocated in a different way. Engagement with the devolved Administrations on the intra-UK allocation has begun. Defra conducted a call for evidence in relation to the allocation in England last year, with more engagement planned.

With this explanation, I hope that the noble Lord, Lord Teverson, is reassured that our fisheries management plans and approach to quota setting will provide sufficient opportunity for appropriate and local engagement, and so will feel able to withdraw his amendment.

9.30 pm

Lord Teverson: How do I reply to the Minister on that one? If I am really honest about it, what I hear is "We would quite like to keep it as it is at the minute, all we want to do is go through our normal consultation exercise and that will be okay." I was quite encouraged by the letter from the noble Lord, Lord Gardiner, to the noble Lord, Lord Cameron, which began to talk about regional devolution—just on quota management—but I did not really hear anything from the noble Baroness the Minister that suggested that the Government would develop that idea further.

On the arguments about forcing people to be on an advisory board, you would have a queue of people—in fact, the problem would be that the queue would be worse than a queue in a hospital at the height of the NHS crisis. Lots of people would want to participate in this, and for good reason: they want to do good for their region, they want to get this right and they want to stimulate the local economy and have greater authority over these fishing plans.

I feel severely disappointed. As I have said, this model is not perfect but, if you are going to have management plans that work, you have to base them around the industry, and the industry operates from ports. That is why you have to base this at ports. Sure, some of the same fisheries relate to different ports but, on the whole, they are adjacent. Often, even close ones—certainly the fisheries out of Brixham, Newlyn and Plymouth—are very different. I have had representations from the Cornwall and Scilly LEP for it to be sensibly and actively involved somehow, rather than in the normal run of consultation. There is a big difference between consultation and devolution. What we are looking for here is real devolution. In the model that I have put forward—perfect though it may not be—I have not made it so it has statutory power; I have tried to make it moderate and reasonable.

I would really like the Minister to develop the undertaking that was given to the noble Lord, Lord Cameron, in that letter and to think about this further. This Bill could really make a difference. At the moment, I feel that all the Bill does is create more of the same. There is so much that we could do to really make a difference here. I am sure we would agree to most of that, yet we have a framework Bill that pretty well keeps everything as it is. All is does is replace the mechanisms of the common fisheries policy with something else; it does not really act to a greater good than we have at the moment. These are the sorts of things we could do but, for the moment, I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Clause 8 agreed.

Amendment 65 not moved.

Schedule 1: Fisheries statements and management plans: preparation and publication

Amendments 66 to 70 not moved.

Schedule 1 agreed.

Clause 9: Fisheries management plans: transitional provision

Amendment 71 not moved.

Clause 9 agreed.

Clause 10: Effect of fisheries statements and fisheries management plans

Amendments 72 and 73 not moved.

Clause 10 agreed.

Clause 11: Reports on fisheries statements and fisheries management plans

Amendment 74 not moved.

Amendment 75

Moved by ***Lord Teverson***

75: Clause 11, page 10, line 28, at end insert—

"( ) The Secretary of State must, in consultation with the devolved authorities, publish a report annually that details the state of all stocks for which there are fisheries management plans."

Member's explanatory statement

This amendment ensures that there is a report on the state of the stocks each year, not every three years.

Lord Teverson: My Lords, I am sure we will deal with this very quickly: there may be a misunderstanding here. One of the most important things if we are to have a sustainable fishery is that we understand the state of the stocks on an annual basis, as we do at the moment. We have cited many times this evening and on Monday the proportion of the stocks that are or are not meeting MSY within the common fisheries policy. I just want to be assured that there will be something similar each year, certainly for those precious stocks and, I hope, for some others as well—I am looking to the Government to guide me here—so we can understand, as Parliament and as the industry, what the states of the stocks are each year. I cannot understand why this could not be the case if we have any sort of quota allocation or annual international negotiation with adjacent coastal states. I am looking to the Minister to clarify this and to assure me that we will keep that regular feedback on the state of the stocks. I beg to move.

Baroness Jones of Whitchurch: My Lords, I am grateful to the noble Lord, Lord Teverson, for tabling this amendment. He raises an important point about the need for the most up-to-date scientific evidence on the state of stocks to aid planning and quota allocation. As previous debates established, there are a number of different timescales resulting from the provisions in the Bill and it is important that we somehow manage to mesh them effectively. One of them, the reporting of the state of stocks, is currently a three-year timescale, whereas this amendment quite rightly proposes a timescale of one year.

We feel that there are strong arguments for this. Given that quota negotiations and fishing opportunity determinations are due to be made annually, and they are meant to draw upon the latest and best scientific advice, it makes sense for the stock reports to coincide with this timescale. Given that the Secretary of State has the opportunity to make mid-term revisions to fisheries management plans, access to the latest data would provide the best possible motive for change. We would go one stage further and hope that these stock reports could be officially collated by Defra and the devolved Administrations and made publicly available. Given that we are moving towards real-time stock measurement and given that the scientific processes we are putting in place will be much more real-time and up to date, I do not think that this is too onerous; therefore we support this amendment and hope the Minister agrees.

Lord Gardiner of Kimble: My Lords, I am grateful to the noble Lord, Lord Teverson, for his Amendment 75, which requires annual reports on the state of

"stocks for which there are fisheries management plans."

Existing annual publications provide information on the state of our fish stocks. The Joint Nature Conservation Committee publishes the UK biodiversity indicators annually on behalf of Defra and the devolved Administrations. These indicators include two covering sustainable fisheries: one shows the percentage of quota stocks harvested sustainably, and the other the percentage of quota stocks whose biomass is at such a level to maintain full reproductive capacity. These indicators are national statistics and part of the UK's commitment to the Convention on Biological Diversity to report on our progress towards its goals and targets—the Aichi targets. Our indicators on sustainable fisheries show data back to 1990.

The Government published their 25-year environment plan in 2018, in which they committed to develop a new set of indicators to report on the state of our natural assets, and to publish an annual report on their progress in meeting the goals and targets set out in the plan. The first annual report, published in May 2019, had an indicator on sustainable fisheries alongside a narrative setting out how we are progressing towards our broader goal for sustainable fisheries. The indicator and narrative will be updated in the 2020 report due in the spring. The evolution of the Fisheries Bill and the introduction of our provisions for fisheries management plans means we will need to reflect and consult more widely with stakeholders as it may be more appropriate for each plan to contain its own reporting framework rather than for us to do a single annual report.

There are also some devolution implications arising from the amendment which cause concern. It would commit the Secretary of State to report annually on any stocks in fisheries management plans published by the devolved Administrations covering their waters only. The devolved Administrations would determine how and when they report on the state of stocks

[Lord Gardiner of Kimble]
covered by their fisheries management plans. In addition, we have enhanced the transparency framework set out in the Bill by committing to provide triennial reviews of the joint fisheries statement and the implementation of fisheries management plans. There are stocks for which we do not currently have sufficient data to assess their status, and we have made provision in the Bill to collect further evidence to determine sustainable levels. The proposed three-year reporting cycle for fisheries management plans will set out our progress for these data-poor stocks.

I am very happy to have further discussions with the noble Lord if he thinks there are any loose ends, but with the existing annual publications—he is probably aware of them already—and the requirements in the Bill, we are asking the question that we all want to know the answer to, which is: are we making progress and is this working? With what we have already and what is planned in the Bill, his aspirations are covered. On that basis, I hope he will withdraw his amendment.

Lord Teverson: Whenever the Minister gives such a comprehensive answer, I get more worried. This was an amendment where I was expecting an answer such as, "Lord Teverson, on this, don't worry. We're just going to carry on. You will know each year how many of these stocks are at MSY and how many aren't." That is the core of what I was trying to get to. I am even more concerned because devolution means that we might not all be on the same page in reporting our fish stocks as a nation, so I ask the question: at the end of 2021, when we are outside the common fisheries policy, will Defra be able to give us or anybody else who wants to know the percentage of stocks that are meeting MSY, just as it does now through the common fisheries policy? Will we know that?

Lord Gardiner of Kimble: Let me repeat what I said. The existing annual publications include one showing the percentage of quota stocks harvested sustainably and another showing the percentage of quota stocks whose biomass is at such a level as to maintain full reproductive capacity. I will be happy to look at those myself, but I am afraid that I do not have them with me. However, not only does the Bill refer to reporting; annual publications already exist.

The noble Lord is worried when I give a comprehensive answer but if I have read this correctly, there is an existing annual publication. Perhaps the noble Lord has got me worried now, but I have no doubt about this. This is published as a part of our indicators on behalf of Defra and the devolved Administrations. I understand the point about the references to the devolved Administrations in the Bill. The task for Defra Ministers, which is an interesting one, is to work very productively with the devolved Administrations, which we are. There is no suggestion that matters which are devolved are no longer going to be devolved; they are absolutely part of the devolved settlement. Whether or not that proves to be an inconvenience for some, that is the settlement which is enshrined, and we will continue to work extremely collaboratively.

Lord Teverson: If the current publications are going to continue as they are, that is probably the answer, but I will check that myself. I thank the Minister for coming back on that point.

More seriously, I accept his point entirely about devolution, and I know that there are problems in other areas. For example, you get only the English figure for fuel poverty because Scotland defines it in a different way. Maximum effort should be made regarding the state of fish stocks because clearly, they are shared between England, Scotland and Wales. There should be a uniform measurement that we can understand, because this situation is different. Fish move across the devolved national boundaries and their stocks are absolutely fundamental to the health of our marine environment. Again, I accept entirely what the Minister has said about devolution and we are not trying to change that, but there really does need to be co-ordination in this area. I beg leave to withdraw my amendment.

Amendment 75 withdrawn.

Clause 11 agreed.

Clause 12: Access to British fisheries by foreign fishing boats

Amendment 76

Moved by ***Baroness Jones of Whitchurch***

76: Clause 12, page 10, line 39, at end insert—

"( ) The master, the owner and the charterer (if any) are not each guilty of an offence if a fishing boat contravenes subsection (1) or (2) as a result of—

(a) danger to life or property, or

(b) any other reason prescribed by the Secretary of State in regulations."

Member's explanatory statement

This amendment makes clear that a foreign fishing boat is not committing an offence if it enters or remains in British waters due to conditions presenting a danger to life or property.

Baroness Jones of Whitchurch: My Lords, I hope that this will be a fairly brief discussion. Amendment 76 has been tabled to seek clarification about the circumstances in which foreign fishing boats might legitimately enter UK waters without a licence. The kind of circumstances we had envisaged were during a storm, if there is an illness on board or when sailing through UK waters to reach a more distant fishing ground. This topic was raised at a meeting with the Minister last week and we were offered assurances by officials that appropriate international agreements and conventions would trump this Bill in the event of an emergency incident. I hope that the Minister will be able use this opportunity to clarify the conventions, how they would apply in these new circumstances, and the legal advice that he has received in relation to this matter.

We appreciate that the criminal offence set out in the Bill relates only to fishing in UK waters without a licence, rather than using UK waters for transit or an emergency landing. However, presumably it is not unusual for foreign vessels which are not licensed to

enter UK waters to cast their nets as close to the EEZ boundary as possible. If a vessel were to be swept off course by changing weather, could that be construed by a patrol boat as unauthorised fishing?

I accept that these are hypotheticals, but there are potentially difficult times ahead for policing our waters. We need to recognise that while we will have robust enforcement in our waters, emotions can sometimes run high when it comes to perceived incursions. It is vital that there be a responsible approach which puts safety first, while ensuring that all foreign vessels understand the implications of the licensing regime we are proposing to introduce and do not flout them without recognising the consequences. I therefore beg to move the amendment.

Lord Teverson: My Lords, this is a really important issue and one that we need to clarify. I am sure that there are international obligations to do this, but I would be very interested to hear what they are. The noble Baroness raises some really important points about the fact that at sea, things can get difficult and emotional. We saw the incidents in the Baie de Seine last year or the year before, so we have to be very clear and careful about some of these things.

One thing I want to point out, which the Minister will be completely aware of, is that we sometimes envision an EEZ where foreign vessels have to stay on one side and British ones on the other; but under international convention, as long as they are steaming and not fishing, they are absolutely allowed to go through international waters. It is important to remember in this debate that it is not all about keeping foreign fishing vessels out of the UK EEZ; they are perfectly entitled to be there, not necessarily in territorial waters but between 12 miles and the median line, or 200 nautical miles. They are entirely allowed to steam through there as long as they do not fish, and we should remind people of that.

Baroness Bloomfield of Hinton Waldrist: My Lords, I am grateful to the noble Baroness for her amendment. This again touches on an issue that I am sure we can all agree is of great importance. The Merchant Shipping Act 1995 has special provisions for assisting vessels in distress. These provisions allow for any UK or foreign vessel that is wrecked, stranded or in distress at any place on or near the coast of the United Kingdom or any tidal water within UK waters to receive any assistance required. In addition, Articles 17 and 18 of the United Nations Convention on the Law of the Sea allow for the right of innocent passage, which applies to all ships of all states, to territorial seas——between 0 and 12 nautical miles—and to the exclusive economic zone, which is between 12 and 200 nautical miles, or the median line. Passage in this instance means navigation through the territorial sea, anchoring or stopping in territorial waters in cases of force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.

For example, in poor weather, foreign vessels can stop fishing and shelter behind a headland to escape the worst of the wind and waves. According to the MMO, it is a common occurrence, especially in east and south-western areas and in Northern Ireland waters, to allow vessels safe navigation and passage. Through this existing legislation, we have a duty to provide shelter in our waters and in our ports so that vessels may deal with injuries, replenish their provisions and refuel; and also to allow them safe transit through our waters to reach more distant fishing grounds. Therefore, foreign vessels that need to access UK waters to get to their fishing grounds, or where there is a concern over danger to life or property, will continue to be able to do so. Any further exceptions will be agreed in international arrangements or set out in vessel licence conditions. This is already provided for in Clause 12(1).

I thank the noble Baroness for her explanation, but I regret that the second part of the amendment, which allows the Secretary of State to prescribe other reasons by regulation, is rather broad and potentially could be a catch-all. Additionally, as drafted, the breadth and ambiguity could cause challenges within the devolution settlements, depending on how broadly or narrowly the reasons were interpreted. I believe that the matter that this amendment relates to is covered in legislation already. With this explanation, I hope the noble Baroness will feel able to withdraw her amendment.

Baroness Jones of Whitchurch: I thank the Minister for that. It is useful to have all that restated. My only other point is that things will change with the new licensing arrangement. The last thing we want is for foreign vessel owners to put their own interpretation on how this will work, so the more we restate it and communicate it very clearly to all concerned, the less scope there will be for other people to try to misinterpret it. I do not wish to pursue this any further. I thank the Minister and I therefore beg to withdraw my amendment.

Amendment 76 withdrawn.

Clause 12 agreed.

Clause 13 agreed.

Schedule 2 agreed.

House resumed.

Joint Committee on Human Rights

Message from the Commons

A message was brought from the Commons that they have appointed a Select Committee of six Members to join with the Committee appointed by the Lords as the Joint Committee on Human Rights.

House adjourned at 9.55 pm.

Grand Committee

Wednesday 4 March 2020

Pension Schemes Bill [HL]

Committee (4th Day)

3.45 pm

Relevant documents: 4th and 7th Reports from the Delegated Powers Committee and 2nd Report from the Constitution Committee

The Deputy Chairman of Committees (Baroness Fookes) (Con): My Lords, I am obliged to make the usual announcement: that if there is a Division in the Chamber, this Committee will adjourn immediately for 10 minutes.

Amendment 80

Moved by ***Lord Balfe***

80: After Clause 125, insert the following new Clause—

"Compensation payments under Pension Protection Fund

In Schedule 7 to the Pensions Act 2004 omit paragraphs 26, 26A and 27 (compensation cap)."

Lord Balfe (Con): This is a rather technical amendment in many ways. I declare my interest as the president of the British Airline Pilots Association, one of the unions that would be affected by a change in the law such as is suggested here.

Members generally pay into pension schemes on the basis of putting so much in for an accrual rate, which gives them a pension. But if pensions go into the lifeboat, the amount that people can get out is limited. This ruling was originally done for a very good reason: to stop boards of directors awarding themselves large pensions, then a company going bust while they transferred the liability for their excesses into the lifeboat. However, it had an effect which I do not think was foreseen. There are a number of people in the private sector who have quite high earnings and are in pension schemes—at that time largely in DB schemes—and they were affected by this ruling. In short, it meant that people were paying into a scheme but not getting out what they had been paying in for. They were given a promise but it was not honoured, because of the cap that was put in place.

Amendment 80 seeks to review this cap. I accept that it is a complicated matter and would be more than happy if, in responding, the Minister can say that she is prepared to have this added to the subjects we are to discuss at the meeting which has been promised. I recognise that if we were to change the law, we cannot just abolish it. We would need to look at things; in particular, I suggest that we would need to erect some safeguards with reference to accrual rates, so that we would not allow an accrual rate above a reasonable level—possibly 2%. Any person affected would also have to be able to demonstrate that they had paid into the pension scheme over a number of years, and had not been awarded a lump sum of years just before the company went under. There would also have to be maximum contributions for tax relief. In other words, you could not suddenly have a huge contribution going in and building up a large amount of pension.

The amendment is basically aimed at enabling workers who have paid for a pension scheme but happen to be high earners to look forward to getting what they have paid for. I point out that, at the moment, the main people affected would be those who used to work for Monarch. But I would not like to predict where, for instance, the British Airways pension scheme will be 10 years from now. The Spanish company that is now the owner of BA might well be in a position where, for some reason or other, it is not able to fully honour the pension agreement. It is better to look at it now than to do so then.

I also make the point that most high earners in society are covered by public sector pension schemes. The people who work in the health service, for instance, are covered by the health service scheme; senior civil servants are covered by the civil service scheme; most people in the nuclear industry are covered by a public sector scheme. It is often forgotten that even in private schools, the staff are actually in a government-backed scheme. There is a lot of debate going on at the moment because the costs for private schools that pay into the Department for Education-funded scheme have increased considerably. None the less, teachers in private schools are covered by a public scheme.

As I said at the beginning, I ask only that the Minister would kindly agree to add this to the agenda. It is a problem that is capable of being solved. It is not quite as simple as my amendment suggests—I accept that—but putting forward this amendment was basically the only way of dealing with the scheme as it stands. Quite a bit of legislation, in the form of statutory instruments, would be needed to cover the way in which any deviation or loosening of the scheme was governed, because it is emphatically not the intention of this amendment to free up pension schemes so that irresponsible boards of directors could award themselves large pensions. This is to do with workers who have paid into a pension scheme for many years and are unwittingly caught by the cap because their employer is unable to fulfil its pension obligations.

Baroness Altmann (Con): I have added my name to this amendment. I support my noble friend and echo his request to the Minister for a meeting to discuss this issue further. I understand that it may not be possible to arrange immediately, and needs careful consideration, but, given the rulings in court cases and so on, it may be worth trying to address some of these issues, which are clearly causing distress to an important, albeit small, number of people.

Lord McKenzie of Luton (Lab): My Lords, we have some difficulty with this amendment. We are more than happy to put it on the agenda for a meeting, although I recall earlier sessions when I think the noble Lord, Lord Balfe, convened a meeting with the pilots' association for us to range over this. At that stage neither we nor the Government were particularly happy with any change—or the sort of change suggested here.

There is an issue about affordability for the PPF that has to be taken into account. We should also bear in mind that funding for the PPF comes from a levy on these other pension schemes, so the higher costs go the greater the hit on those schemes. As I understand it,

[Lord McKenzie of Luton]
the proposition is that it would cover not only those who receive a payment in future but all those currently receiving capped payments. It would free up those amounts, too.

I do not know whether the noble Lord has an impact assessment for this proposal; if so, we should certainly see that. Although he partially dismissed it in his speech, when the scheme was designed the moral hazard issue was very much in mind—heavy hitters and senior people in organisations are better able to control the destination of their pension funds and remuneration, and there should be a mechanism in there to ensure that the options were not open-ended. At the moment the cap bites, I think, at something like £40,000, so we are not talking about people with minimal pensions. I think the average payout from the PPF is about £4,000, so there is a big contrast. Having said that, I am more than happy to join a discussion to review these issues—but I am not convinced that we would change our position.

The PPF has done marvellous work over the years, enabling people to receive an income when there would have been nothing. It is a very good organisation. We may check to see whether its view now is different to its view previously, but I doubt it, so the onus is very much on the noble Lord to come forward with an impact assessment to say how much this would cost if we did it. Having said that, we on this side would not be able to sign up to it.

Baroness Altmann: I echo that praise for the Pension Protection Fund. It has been a marvellous success story and has rescued so many people. It is run efficiently and with care for those who claim on it. I cannot praise it highly enough.

Baroness Scott of Bybrook (Con): My Lords, let me begin by thanking the noble Lords, Lord Balfe and Lord Sharkey, and the noble Baroness, Lady Altmann, for this amendment. I believe that the intention is to improve member protection in the event of employer insolvency. The amendment would remove the Pension Protection Fund compensation cap currently applied to payments for members who were under their scheme's normal pension age when their employer became insolvent.

It might be helpful if I first explain that the Pension Protection Fund is a compensation scheme and, as such, was never intended to meet the full pension promise made to every member of a failed scheme. Members over their scheme's normal pension age and those who were in receipt of survivors' benefits or an ill-health pension broadly receive full protection. Everyone else receives broadly 90% of their scheme benefits, subject to an overall cap. This means that the cap applies to early retirees as well as deferred members, ensuring that Pension Protection Fund compensation is calculated on the same basis for members of the same age in the same scheme.

It is worth mentioning that the Government are defending the cap before the domestic courts. Their position in this litigation, and current policy, is that the cap meets important objectives and should be retained. First, the cap helps to give greater protection to those who have reached their scheme's normal retirement age at the time of employer insolvency. These members are likely to have fewer opportunities to supplement their income in other ways. Secondly, the cap helps to control the costs of the fund—costs that may otherwise fall on levy payers. Finally, as we have heard, the cap is intended to encourage people with influence over the schemes to fund them responsibly and to discourage excessive risk-taking. Key decision-makers have an incentive to ensure that their schemes stay out of the Pension Protection Fund because the cap is likely to have a direct impact on the compensation that they would receive.

The level of the cap was set after much research and analysis. The current full amount is around £40,000 at the age of 65. Members under their scheme's normal pension age initially receive 90% of the capped amount, which equates to around £36,000 at the age of 65. Nevertheless, this far exceeds the estimated average defined benefit pension of around £8,000. Only a few members of the Pension Protection Fund are affected by the cap. The nature of the cap means that it affects predominantly high earners; abolishing it would, therefore, mainly benefit those high earners.

In conclusion, the cap is a necessary and proportionate means of achieving a number of significant policy aims in relation to the Pension Protection Fund compensation scheme. I hope that this provides sufficient reassurance to noble Lords, and I urge the noble Lord to withdraw his amendment. At the same time, we would be more than happy to add this issue to the agenda for our meeting, which has been arranged for Thursday 12 March at 10 am.

4 pm

Lord Balfe: I thank noble Lords for this short, but interesting, debate. An interesting part of my role is that when David Cameron said, "Try to be helpful to as many trade unions as you can", I seem to have collected some of the higher paid trade unions such as those for hospital consultants, British airline pilots and one or two others in the TUC. It is always great fun to go down to the TUC Congress, meet them there and hear them muttering away. I take the points that have been made. The feeling arose largely out of the Monarch situation in which a number of people had paid a considerable amount in yet they were not getting what they saw as fair recompense. The point made to me, which I am sure will be made again, was that if they were in the public sector, there would be no case for them going into the Pension Protection Fund because public sector funds do not go there, but because they were in the private sector—

Lord McKenzie of Luton: The point the noble Lord makes about public sector funds is right, but in trying to make comparisons between somebody with a public sector pension and people who are not in that position, all sorts of differentials come into play, such as general levels of remuneration. With great respect, I do not think the noble Lord's argument stands up in that respect.

Lord Balfe: Perhaps I mix with rather affluent members of the medical profession. I had a session recently with a hospital consultant staff association, which made some very firm points about how high earners were

being discriminated against. I am not making the hospital consultants' point here. I am making the point that the public sector basically has a system of protection so that when a Permanent Secretary or a member of the First Division Association retires, there is no case that the FDA pension will ever go into the lifeboat. I was making the point that was made to me, which was that members were paying into a fund that they were not receiving benefit from and that if they had been in the public sector they would. I am very pleased that the Minister has offered to discuss this, although having heard the response I am not sure that the discussion is going to lead very far. I am pleased that we have had this constructive debate and on the basis of what has been said, I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

Clauses 126 and 127 agreed.

Clause 128: Further provision relating to pension schemes: Northern Ireland

Amendment 81

Moved by ***Baroness Stedman-Scott***

81: Clause 128, page 120, line 33, after "sections" insert "(Climate change risk) and"

Member's explanatory statement

This amendment is consequential upon the Minister's amendment to insert a new Clause after Clause 123.

Clause 128, as amended, agreed.

Amendment 82

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

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

"Pension Schemes Commission

(1) Within six months of the passing of this Act, the Secretary of State must establish a Pension Schemes Commission to—

(a) conduct a strategic review of public policy regarding pension schemes, and

(b) make recommendations.

(2) The Secretary of State must respond to reports from the Pension Schemes Commission with a written statement laid before each House of Parliament."

Lord McKenzie of Luton: My Lords, it will not take us long to deal with this amendment. When it was conceived as an amendment, there was a fairly grand design behind it but, as time has moved on, it has perhaps condensed just to a statement of beliefs in the key issues. The amendment calls for the establishing of a pension schemes commission—I hesitate to raise that issue in the proximity of my noble friend Lady Drake; we live in awe of what that commissioner achieved. The idea of the commission would be to conduct a public policy review of pension schemes. There is plenty to reflect on without stepping on the policy responsibilities of the Minister, or indeed of any Select Committee.

In recent times we have experienced the implementation of a Pensions Commission and auto-enrolment; the new state pension; changes to state pension age; the so-called pensions freedoms; master trusts, CDCs, and the future of DB schemes; an increased focus on governance, transparency, levels of charges and the pension tax system. Some of this has reached a degree of maturity and some not; some has been seen in the strategic context, and some not. In respect of this, there remain the ongoing matters of gender equality, savings levels and, still, pensioner poverty. In addition, there is our consultation on investment principles and the important issue of climate change. Therefore there is scope in all of this to reflect in future pensions issues, and today I do no more than set down a list for consideration. I beg to move.

Lord Young of Cookham (Con): My Lords, I see that on the website of an organisation called This is Money, published on 20 January, Mr Opperman, who is of course the Minister with responsibility, is quoted as saying that he

"believes a new commission should review the future of the automatic enrolment system".

Noble Lords may also remember that on 17 January, two think tanks, the Fabian Society and Bright Blue, launched a report calling for a cross-party commission on pensions. Responding to that, an organisation called B&CE published the following comments:

"Commenting, Guy Opperman MP, Minister for Pensions, said: 'Over the last decade, Conservative and coalition governments have made huge strides to improve pensions for the next generation, with the introduction of auto-enrolment, an enhanced state pension and the development of the Pensions Dashboard. For the next stage of pension reform, we need to continue the consensus that emerged following the Pensions Commission of 2003 to 2005. A new Commission has cross-party support, and will help us map out the future of auto-enrolment, so we can boost contribution rates in the coming decades, and explore how we can support savers with pensions freedom reforms. Let's not give up on the progress we've made in pensions through cross-party working. It's time to explore ideas for the next generation'."

It therefore seems that the thinking behind the proposed new clause in the name of the noble Lord, Lord McKenzie, has some support at the moment within the DWP.

Baroness Bowles of Berkhamsted (LD): My Lords, the noble Lord, Lord Young, has done the job for me, but broadly speaking, I support this amendment. As well as what has already been elaborated, it plays into the feelings that have come up several times as we discussed the Bill as well; namely that, although the noble Earl has said that there is policy, a lot of implementation is also yet to come, and perhaps some of us feel that some policy is also yet to come. I therefore hope that a commission could come along subsequently and that it would be able to have an overview of some of the newer things as well as reviewing older things and looking forward. Therefore, I also support the notion of having this pension schemes commission.

Baroness Neville-Rolfe (Con): I look forward to hearing from my noble friend the Minister on this, but I confess that I have a little scepticism about this proposal. We have had many reviews of pensions, including the trailblazing Pensions Commission led originally by

[Baroness Neville-Rolfe]
Adair Turner—the noble Lord, Lord Turner. Many changes have been made to the law, including auto-enrolment, which I think we in this Committee have all welcomed. Of course, those in the current Bill are important as we seek to tackle the issues raised by the BHS and Carillion cases and to introduce dashboards.

I am not convinced that this is the time for another commission and another review. I feel that this is the job of the Pensions Minister and the DWP. Quite a lot is going on in pensions, and the priority should be to make sense of the sort of issues we have discussed on this Bill or issues that arise on things such as exit from the EU, and to get on with those in a practical manner. I look forward to hearing from my noble friend. If she takes a different view, of course, I am happy to reconsider.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Stedman-Scott) (Con): My Lords, I am grateful for the opportunity to respond to this amendment tabled by the noble Lord, Lord McKenzie. We do not think there is a need for this new clause to be included in the Pension Schemes Bill, as legislation is not needed for a pension schemes commission to be established. The pensions landscape has changed considerably since the 2006 Pensions Commission; there have been major reforms to the UK pensions system. We have successfully rolled out auto-enrolment, introduced the flat-rate new state pension, abolished the default retirement age and raised state pension age.

The first independent review of state pension age was published in 2017, and this Government have committed to undertaking a review of state pension age every six years, in accordance with statutory requirements, to enable consideration of various factors, including the latest life expectancy projections. This Government are committed to maintaining a pension system that enables financial security for current and future pensioners. Further refinement and evolution will no doubt be needed in future to take account of changes in the labour market, home ownership and debt.

However, a commission is not the only way to identify and make recommendations for the future. We continue to engage extensively with key stakeholders, including consumer and employer organisations and the pensions industry, working collaboratively to identify and take forward a robust programme of work that builds on the strong foundations now in place.

For example, the Government carried out a review of the automatic enrolment scheme in 2017. Implementation of the review measures will be subject to learning from the recent workplace pension contribution increases; discussions with employers and others on the right approach; and finding ways to make these changes affordable. Once the evidence on our reforms is clear, we will look again at the right overall level of saving and the balance between prompted and voluntary saving. We are monitoring the impact of pension freedoms and the effectiveness of regulation of the market and information and guidance.

It is right that individuals are trusted with their own hard-earned money and savings. They are best placed to manage their money throughout retirement. While it is not the Government's role to monitor individual people and the decisions they make, we recognise that it is important to support individuals in making decisions for their retirement. That is why we established the Pension Wise service to provide free and impartial guidance to help consumers make sense of their options.

This Government are focused on delivering and improving aspects of the existing pensions system. We are open to looking at aspects of the current system, but do not feel that an examination of the fundamentals of the pensions system is appropriate at this time.

My noble friend Lord Young made the point that my colleague, the Minister for Pensions, has shown support for a commission. Noble Lords are right to pay tribute to those who were part of the Pensions Commission chaired by the noble Lord, Lord Turner, which was very successful at building consensus around the future of pensions policy. Although several individuals and groups have called for a pensions commission, there is currently little consensus about what the scope and structure of such a commission should be. We believe we can engage effectively with interested parties without needing another commission.

My noble friend Lord Young also mentioned Bright Blue and the Fabian Society calling for a pensions commission. Again, I understand that a number of key stakeholders have demonstrated their enthusiasm for a review of the pensions landscape.

I do not discount future reviews of some element of the pensions system. We have already undertaken some reviews and will no doubt undertake others. However, I believe that the fundamental structure of the pensions system, based on the recommendations from the Pensions Commission, is still valid.

4.15 pm

Baroness Sherlock: I think I am right in saying that the argument for not proceeding was that there was no consensus around the aims or the remit. What attempt have the Government made to achieve consensus?

Baroness Stedman-Scott: The best answer I can give is that I will find out and write to the noble Baroness, because I do not have that information at the tip of my fingers.

The Bill will deliver further improvements, including strengthening consumer protections, improving scheme governance and communications, and facilitating the creation of pension dashboards. We will continue to review these improvements, including a contribution that a pensions commission could make in future. I respectfully ask the noble Lord, Lord McKenzie, to withdraw his amendment.

Lord McKenzie of Luton: I thank the Minister for her response on this matter and noble Lords who have spoken in favour of this proposition. For those who have felt unable to support it at the moment, I simply make the point that there is no particular timeline: it does not say that it must happen all at one time, or that it must happen tomorrow. There are clearly aspects of the current system which are unsatisfactory.

If I had to encapsulate that in two or three words, I would say that pensioner poverty and under-saving are still with us, big time. Somehow, we need to address that. Having said that, I beg leave to withdraw the amendment.

Amendment 82 withdrawn.

Amendment 83

Moved by ***Baroness Neville-Rolfe***

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

"Tapered reduction of annual pension tax allowance: review

Within 6 months of the passing of this Act, the Secretary of State must conduct a review of how legislation and policy governing pension schemes could be adjusted to mitigate adverse effects of the tapered reduction of annual allowance under section 228ZA of Finance Act 2004, and lay a report before each House of Parliament."

Baroness Neville-Rolfe: My Lords, I have tabled Amendment 83, which sets a deadline for a review and is essentially probing in nature.

I am unashamed. I want to put pressure on the Government to do something—and fast—about the impact of the cap on senior or long-serving doctors and consultants. We have a mini-crisis here which dates back many months, and the situation is even more serious given the potential impact of Covid-19. I join others in commending the Secretary of State and the CMO for today's all-party meeting, and for setting out all that is being done to manage this alarming virus—including encouraging clinicians out of retirement.

There is a pension problem. As my noble friend Lord Balfe told Parliament on 30 October, a BMA survey showed that 42% of GPs and 30% of hospital consultants were reducing their hours. There have been similar figures from the Royal College of Physicians. Doctors are attracting substantial tax bills to care for their patients, and are therefore reluctant to do extra sessions to clear waiting lists or to take on management. There are reports that as many as half our doctors are retiring younger than they used to and that the lowering of the annual allowance from £255,000 in 2010 to £40,000 today, and the increase in the retirement age to 65, may well be factors.

The situation is worse in hospitals than in GP practices, mainly because the latter earn less. However, GPs can be caught out if their practice income peaks temporarily because of a vacancy or because a doctor is missing. The reward for all the extra work and stress can be an extra tax charge. This is especially difficult for small practices, which, unfashionably, I have found to be the best, because they provide continuity of care, which saves on drugs bills and hospital costs. However, that is a matter for another day.

That brings me to hospital consultants, who are generally better paid than GPs but are critical to patient outcomes. I will never forget the lady consultant at King's who managed me through the latter weeks of a pregnancy, when my youngest son refused to move.

The situation is serious. The impact of the coalition fix—to allow people to carry forward unused allowance from the previous three years—is, I think, running low. The DHSC consulted recently on proposals to allow senior medical staff to opt to build up a pension at a lower rate. This was, however, dismissed by the BMA as a sticking plaster. Understandably, it wants a change in the rules. As always, given the noises made by senior politicians, there is much hope—including on my part—about next week's Budget.

What, therefore, can and should be done? I look forward to hearing from other noble Lords who have been kind enough to support this amendment, and from the noble Lord, Lord Warner, whose Amendment 86 proposes new regulations to ensure that NHS pension scheme members are reimbursed if they are worse off. I look forward to hearing how that would work.

Other approaches might include getting rid of the annual pension cap—the so-called annual allowance—and relying entirely on the lifetime allowance, which has been reduced over time. Alternatively, and perhaps more radically, we could move relevant senior medical staff on to non-pensionable pay, above a certain level, but pay them as salary the notional employer pension contribution that they miss out on. They would have a higher tax charge, but they would not be punished for working, which I think is the concern.

Many very intelligent people have spent hours trying to fix this problem, so it probably is not easy. There are ways to do it, and we must have a solution by the time this Bill reaches Report if the NHS is to overcome today's growing challenges.

Lord Warner (CB): My Lords, Amendment 86 is in my name and those of the noble Baronesses, Lady Altmann and Lady Janke. It is a rather simple amendment for tackling a complex problem that is, as the noble Baroness, Lady Neville-Rolfe, has said, causing a great deal of damage to the NHS and to patients.

I will not go into the intricacies of the interrelationship between pensions and tax policy, or repeat the data that I laid out at Second Reading about how this is affecting doctors. The noble Baroness, Lady Neville-Rolfe, has given a reprise of some of that data. There is plenty of data showing the impact on doctors and the NHS; you do not have to look very far to find it. Noble Lords will therefore be relieved to hear that I will not go over that ground again.

The point of this amendment is to address what is happening on the ground now in our NHS. We have arrived at a situation in which doctors can neither control their pension growth nor predict their tax bills; that is where we have got to. Tax bills cannot be calculated until the end of the tax year in which the tax has been incurred; by then it is too late for doctors to adjust their earnings. In some cases, the tax bill exceeds the entire take-home pay that the doctor would earn in a given tax year. We are getting to the point where doctors have to pay to work: that is the situation we have created.

The only way that they can avoid the tax bills is to reduce their work in anticipation, which is what they are doing. I have previously set out the implications of that form of workload reduction, so I will not repeat them, but they include, in many cases, taking early retirement. The serious implications this has for patients and the running of the NHS needs no exaggeration. Suffice it to say that there has been a very large decrease

[Lord Warner]
in NHS medical clinical capacity, with very serious implications for patients and the functioning of the NHS. The latest BMA survey of 6,000 doctors shows that even more doctors, in this year and in the past, are planning to reduce their work commitments in the tax year, which is only a month or so ahead. This is why the situation is incredibly urgent.

This problem was so serious that NHS England acted to take the unprecedented step of agreeing to cover annual allowance payments for NHS doctors for the current tax year to try to ease the significant winter pressures on the NHS. At present, as far as I know, there is no plan to suggest that this short-term mitigation will continue into next year, let alone the longer term. It is all very well for the Government to pass last week an NHS Funding Bill, but if there is a serious shortage of doctors, it will not do patients much good.

The Government have been reviewing this problem for some time, but my information from the BMA and others is that they have not so far offered any worthwhile mitigation scheme. All that is available is the option of paying these large tax bills from future pensions by generating a loan against your pension which attracts a high rate of interest and effectively reduces your pension. This option will not reduce the outflow of doctors. Amendment 86 requires the Secretary of State to extend the NHS England scheme on a permanent basis. It also prevents doctors incurring any interest-bearing loans that will reduce their eventual pensions. It has been prepared with the help of the clerks, for which I am grateful, and discussed and agreed with the BMA and other professional bodies.

I am not saying that my amendment is the only solution to the problem—the noble Baroness, Lady Neville-Rolfe, has given some other options—but it is an attempt to apply an urgent response to stop more doctors leaving the NHS or reducing their capacity. If the Government can come up with a better solution, I will be delighted. So far, there is no sign of a solution acceptable to the profession that would stop the NHS haemorrhaging doctors.

Let us remember again that the new tax year starts in a month, and that the coronavirus epidemic threatens all of us. I listened yesterday to the Prime Minister and the Health Secretary referring to bringing back retired doctors; that seems to be an important part of their emergency plan for dealing with a potential epidemic. I wonder how aware they and their No. 10 special advisers are of this own-goal lurking in the bureaucracy. We can ill afford to lose doctors from our NHS through a self-inflicted government muddle when a solution is to hand.

Baroness Janke (LD): My Lords, I too have signed both amendments which, as has been said, relate to the current situation of the punitive pension taxation on doctors in the NHS. The annual allowance means that retired doctors working additional hours may incur large tax bills even if they have had only a modest rise in pensionable pay; and the taper results in a further problem, as there is an effective tax cliff edge where people can incur additional tax bills of up to £13,500 if they cross the threshold by as little as a pound.

This huge disincentive to retired doctors who are working to fill staff shortfalls in the NHS has exacerbated the existing pressure. As the noble Lord, Lord Warner, said, the impact was such that NHS England took the step of agreeing to cover the annual allowance payment for NHS doctors for this tax year as a temporary mechanism. As he also said, it seems that so far there are no plans for this to be a long-term solution.

4.30 pm

The BMA's briefing tells us that the scale of the pensions problem and its impact on the NHS workforce and patient services cannot be underestimated. It is, unfortunately, being felt across the country. Waiting times for cancer and routine care are the longest on record. A&E performance is the worst since records began, and 11 million patients are experiencing unacceptable waiting times for GP appointments as doctors continue to be forced to reduce their work to avoid huge, disproportionate tax bills. There is an urgent need for the Government to address this situation. Amendment 83 calls for a review of the annual allowance and taper; Amendment 86 calls for the current short-term mitigations to be extended into the future on a permanent, statutory basis. Like the noble Baroness, Lady Neville-Rolfe, I want to put pressure on the Government. As she ably described, this could be approached in a number of different ways. I hope that we can put pressure on the Government, and I look forward to hearing what the Minister has to say about how this situation can be resolved.

Baroness Altmann: My Lords, I support Amendments 83 and 86. Noble Lords have already explained the problems in great detail. However, this crisis dates back more than two years. NHS hospitals and regional authorities have been trying for some time to deal with the fall-out of the taper and to find a resolution, but so far there has been no action. The Government promised action within 30 days last December, and we are still waiting. The doctors and medical staff in this scheme were given a promise, but it has not been honoured because of flawed attempts to save money on pension tax reliefs for so-called high earners. Yet the costs resulting from the unintended consequences of the legislation—I understand the thrust of that legislation—in paying locums, cancellations and inadequate NHS services may well outweigh any savings that might have been achieved by trying to clamp down on high earners.

I was at a BMA consultants' conference today, giving a presentation on pensions. In a room seating around 400, those consultants decided to have an emergency vote and it was unanimous in favour of urgent government action, such as Amendment 86 being introduced. There was clear anger around the room at what they feel is a betrayal of their terms and conditions of service. They had no warning of the changes in tax relief, which were said to affect only those earning more than £150,000 a year; in fact, the way that the cliff edge and the threshold work means they have hit people earning a lot less than that. They were given no chance to mitigate their losses. In the private sector or in other government schemes some mitigations have been offered, but not for the NHS.

In any case, the rules of this taper make it impossible to predict what tax bill you might incur as a result of being asked to take on extra work because it depends on your current year's earnings, which you will not know until the end of the current year. The Government could consider using last year's earnings; at least one might have a fighting chance of knowing what extra work one might be able to take on. The scheme-pays arrangement, whereby it is possible that staff will not have to pay the charge, is a loan at around 6% interest that rolls up every year. Some consultants in their 40s were explaining to me today how that feels so penal. One could imagine changing that interest rate, for example.

The bottom line is that even the NHS pension scheme was unable to provide the staff with the information that they, or their advisers, would have needed to predict what the tax consequences of the work they were doing might have been. If they do not know what the impact will be, it is logical that they are not going to do the work. I understand that the plan in the Budget may well be for the Government to increase the threshold and introduce a bit more flexibility. I can assure the Committee that if that is the plan, it will not solve the problem.

The proposal in Amendment 86 is a practical way in which doctors can be reassured that if they carry out extra work, especially in the current extreme medical environment that we may well be facing, they will not be penalised taxation-wise and pension-wise for doing so. This amendment might not fit precisely in the Bill, but I would be grateful to hear from my noble friends what the reaction is to the proposed method of dealing with this problem. If the Bill represents, as the BMA said in its briefing, a valuable opportunity to find a resolution to this long-running problem then I hope that it will be able to address the issue, and put our NHS and our most valuable medical staff back on an even keel.

Lord McKenzie of Luton: My Lords, this issue has been rumbling around for far too long and it is time to try to get a solution to it, particularly, as many noble Lords have explained, because of the pressure that the NHS would have been under anyway but for the recent crisis. My noble friend Lord Warner made a strong case with his proposition and we would certainly like to reflect on it. I know that the problem is that lots of people have reflected from time to time on a possible solution. That reflection goes on, but we do not yet have a solution. But Report on this Bill will be coming up shortly, and of course we have a Budget of some sort not far in the distance.

I have a couple of questions. I do not know whether my noble friend Lord Warner or the Minister can help with them. Was the one-off payment that the NHS made to cover the annual allowance taxable, and what might the consequences of that be? Under the scheme-pays arrangement, as the noble Baroness, Lady Altmann, hinted, if the problem is the penal interest rate then what is to stop those rates being adjusted, and who controls them?

We also need to bear in mind in all this is that these rules, unless I misunderstand them, have general application in the tax system. We need either to find a way of having some special arrangements or to accept that the adjustments we make here would have to be run for the tax system generally. We will need to work through the consequences of that. I am conscious that this contribution has not added one bit of sense to a practical solution, which is what we need to reach. Maybe, at the end of the day, we simply need to rank the solutions that we have on the table and choose the best, even though that may not be optimisation.

I am sure we all remember the pressure about this—I certainly remember pressure from the old Luton and Dunstable Hospital about it—and the real adverse effect that it causes on the delivery of services. We cannot continue to allow that to go forward; we simply have to drive through a solution to this. That is the challenge; presumably, the Treasury has ultimate responsibility for meeting it. But if it will not then we should, with the help of my noble friend Lord Warner and his expertise in these areas.

Earl Howe (Con): My Lords, the amendment from my noble friend Lady Neville-Rolfe would commit the Secretary of State for Work and Pensions to review the tapered annual allowance on tax-relieved pension savings and require the Secretary of State to set out how pension schemes could mitigate any adverse effects of the taper. On the other hand, the amendment from the noble Lord, Lord Warner, would commit the Secretary of State for Work and Pensions to make regulations to require the NHS pension schemes to reimburse members for pension tax charges and, in particular, annual allowance charges.

I will set out where matters currently stand on this. First, in recognition of the impact that the tapered annual allowance is having for some doctors this year, NHS England has announced—as has been mentioned—a special arrangement for 2019-20 only, which doctors in England can use to ensure that they will not be worse off as a result of taking on extra shifts this tax year. This arrangement allows senior clinicians to defer an annual allowance charge through scheme pays. Their NHS employer will make a contractually binding commitment to pay a corresponding amount on retirement, ensuring that they are fully compensated in retirement for the effect of the scheme-pays deduction on their retirement income.

Health is a devolved matter. This special arrangement applies only to England, but we are aware that the Welsh Government and NHS Scotland have also put arrangements in place for the current tax year.

The Government most certainly recognise that urgent action is needed to resolve the pensions tax issue, which has caused some doctors to turn down extra shifts for fear of high tax bills. We are committed to ensuring that hard-working NHS staff do not find themselves reducing their work commitments due to the interaction between their pay, their pension and the relevant tax regime. That is precisely why the Government are taking forward their manifesto commitment to carry out an urgent review of the pensions tapered annual allowance, to make sure that doctors spend as much time as possible treating patients. This builds on the Treasury's review into the effect of the tapered annual

[Earl Howe]
allowance on public service delivery, announced last August. The Government have announced that these reviews will report at the Budget on 11 March.

I understand that the ongoing reviews have received evidence from the British Medical Association, the Academy of Medical Royal Colleges and other representative organisations from across the public and private sectors. The Economic Secretary to the Treasury has held round-table discussions with key health sector stakeholders, as well as representative organisations across the public sector. The evidence provided will ensure that the Government can consider fully the impact of the tapered annual allowance and its effects on the NHS and other public services.

The amendment from my noble friend Lady Neville-Rolfe would have the Government commit to yet another review of matters relating to the tapered annual allowance. I hope she will accept that there is no need for a further exploration of this matter when the two reviews are ongoing and have not yet concluded, especially as those reviews will report shortly.

The amendment proposed by the noble Lord, Lord Warner, would commit the NHS pension scheme administrators to reimburse their members to the extent they had incurred an annual allowance tax charge. The practical difficulty with this, which I am sure the noble Lord does not intend, is that reimbursement from the scheme for tax charges could trigger an unauthorised payments tax charge for the member and a scheme sanction charge for the scheme. Noble Lords will appreciate that this is a very complicated area of tax law and, as I have said, could result in further unforeseen tax charges arising.

The noble Lords, Lord Warner and Lord McKenzie, referred to the interest rate being applied in this area. Perhaps I could just explain the background to this. HMRC rules require that when scheme pays is used to pay a tax charge, an actuarially fair reduction is made to the value of the pension. The discount rate used to value this reduction for public service pension schemes is the SCAPE discount rate plus CPI. The SCAPE discount rate reflects the Office for Budget Responsibility's forecasts for long-term GDP growth in line with established methodology. Due to recent changes to the SCAPE rate and the CPI, the scheme-pays discount rate has fallen in 2019 to 4.8%.

My suggestion to my noble friend and the noble Lord, Lord Warner, is that it is preferable to wait for the outcome of the two reviews, which are ongoing but have not yet concluded. As I mentioned, they will report shortly, on 11 March. Ultimately, this is a matter for my right honourable friend the Chancellor. I am sorry to have to leave matters in the air, but I hope that my noble friend and the noble Lord will take away from this a good degree of reassurance that the Government are taking seriously the question of what impact the tapered annual allowance is having on NHS pension scheme members and that reviews into this matter are already under way.

4.45 pm

Baroness Altmann: I take my noble friend's point on the specific proposals in Amendment 86 in the name of the noble Lord, Lord Warner, which I have signed. However, were the amendment to be redrawn to suggest that an extension of the current arrangements for 2019-20 be brought forward also into 2020-21, would that address my noble friend's concerns about the unauthorised scheme payment and the charges to the scheme? We could time-limit this but also address the urgency, because even if something is reported in the Budget, it is unlikely that the staff will have the reassurance for the forthcoming tax year, which is only a few weeks away.

Lord Warner: I just want to amplify the point made by the noble Baroness, Lady Altmann. Those of us who have been around in government for some years know that the announcement of review reports in Budgets do not necessarily mean that anything in those reviews will be rapidly implemented. My suspicion would be that any such reviews would have a longish period of consultation and would not appear in the next finance Bill—that is a likely outcome. Building on what the noble Baroness said, I need to go back to my clients—if I may put it that way—who will want to know what the position is. If I prove to be right over what happens on 11 March, would the Government be willing to consider something along the lines of buying two to three years for the NHS doctors? Will they help me get the wording right, so that it does not fall into the elephant traps that the Minister has set out? When we get to Report, we cannot just leave this; we have to come back to this issue with some credible solution. I would be delighted if the announcement on 11 March delivered a quick response, but if we do not deliver a response that covers the next two financial years, we will put the NHS in great peril.

Earl Howe: My Lords, my answer to my noble friend and the noble Lord, Lord Warner, has to be exactly the same as that which I have already given. I can do no other than urge all noble Lords to wait for the Budget announcement. I cannot comment on what ideas the Chancellor has in front of him on this issue. Those ideas may or may not include those that have been articulated by my noble friend and the noble Lord—I do not know. I suggest that we get past next week and then take stock. No doubt noble Lords will consider how best to approach this on Report, if they feel that to be necessary.

Baroness Janke: The Minister said that these two reviews will be reported in the Budget. Is he talking about the intention to conduct a review or saying that the outcomes of reviews that have already been conducted will be announced in the Budget?

Earl Howe: The reviews are under way. They have not yet been concluded, but the conclusions will be announced on Budget Day.

Baroness Neville-Rolfe: My Lords, we have had a good debate and I think we have made it very clear that action is urgently needed in the NHS area. It goes wider, as the noble Lord, Lord McKenzie, said, but my amendment was a probing amendment—of the kind that I could get through the clerk—about these

problems in the NHS, particularly now that we have the added threat of coronavirus. The noble Lord, Lord Warner, put it very well. It is an own goal lurking in the bureaucracy, although if you look on the internet it is quite easy to find the scale of the problem.

Doctors are having to pay to work and can hit a tax cliff-edge, as the noble Baroness, Lady Janke, said—through no fault of their own, it seems to me—and are not able to forecast exactly when that cliff-edge might occur. It is an unsatisfactory state of affairs. My noble friend Lady Altmann, with her forensic knowledge of the sector, has pointed out that the problem is now some two years old and that the Government made a promise to resolve it. As the Deputy Leader made clear, we must wait to see what the Budget says, but I would like to be clear that I think all of us will want to return to this issue if we feel that we have not made progress in the Budget on 11 March. I beg leave to withdraw the amendment.

Amendment 83 withdrawn.

Amendments 84 and 85 not moved.

Amendment 86

Moved by ***Lord Warner***

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

"National Health Service Pension Schemes: tax charges

(1) The Secretary of State must by regulations made by statutory instrument make provision to ensure that the National Health Service Pension Schemes reimburse their members for pension tax charges to the extent necessary to fulfil the objective of subsection (2).

(2) The objective of this subsection is that in any tax year, for a member of the National Health Service Pension Schemes, the member's income less annual allowance pension tax charges is not smaller if the member's income is greater.

(3) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Lord Warner: I wish to respond to the Minister before I withdraw my amendment.

The Deputy Chairman of Committees: Once the noble Lord has spoken, the question has to be put.

Lord Warner: I thought that I am allowed to say whether I am withdrawing the amendment.

Baroness Fookes: It has not yet technically been moved, and you are now moving it. Perhaps I should clarify for the Committee that where there is a group of amendments being debated together, only the first amendment is moved. If a noble Lord wishes to move an amendment, it has to come in its numerical order. The noble Lord was not moving his amendment, he was speaking to it.

Lord McKenzie of Luton: Can the noble Lord move the amendment?

Baroness Fookes: Yes, he must move it, because he has started to speak to it.

Lord Warner: I beg to move Amendment 86. In response to the Minister, I think we will need to have some kind of meeting after 11 March, which may involve some of the parties who are very anxious about this. I hope the Minister will take away that thought and get back to me, and to others, when he has had time to consider.

Baroness Fookes: If no member of the Committee wishes to respond, the noble Lord may withdraw the amendment.

Lord Warner: I beg leave to withdraw the amendment.

Baroness Fookes: I am sorry about the schoolmistressy lesson on the subject.

Amendment 86 withdrawn.

Amendment 87

Moved by ***Baroness Janke***

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

"Automatic enrolment age

In section 3(1)(a) of the Pensions Act 2008, for "22" substitute "18"."

Baroness Janke: My Lords, I have three amendments in this group. Amendments 87 and 88 relate to auto-enrolment to reduce the lower age limit to 18 and introduce a review of auto-enrolment which could also examine the possibility of removing the lower earnings limit.

As many noble Lords have said, the success of auto-enrolment is clear, with 87% of eligible employees participating in a workplace pension in 2018. However, by reducing the lower age limit to 18 and removing the lower earnings limit, a further £2.5 billion could be added to savings.

There would also be advantages for younger people in starting to save for pensions earlier in their working lives. It is estimated that the average 18 year-old will end up with a pension pot at retirement around £18,000 lower if they have to wait until 22 to be automatically enrolled. Given that we want people to start saving for a pension as soon as possible, an age limit of 22 seems increasingly hard to defend. Even employers would generally have a simpler system were they to enrol everyone, rather than having different rules for those above and below different age thresholds.

Moreover, further extending the coverage of auto-enrolment by reducing the earning threshold to the national insurance primary threshold would bring 480,000 people, mostly women, into pension-saving. It would also help to improve the gender pensions gap, which is the subject of Amendment 96 in the same group and a growing matter of concern. A woman aged 65 has one-fifth of a 65 year-old man's pension.

Private pension schemes seem to be the main reason for the gender gap, placing women at a disadvantage, mainly due to domestic roles and lower pay. Among 65

[Baroness Janke]
to 74 year-olds, median private pension wealth is £164,700 for men and £17,300 for women, who have just over 10% of the private pension wealth of men. Among the population as a whole, women's median pension wealth is £4,300, less than a quarter of the £19,800 held by men.

Although auto-enrolled private pensions include all employers, they exclude low-paid employees. Like other private pensions, they make no allowance for periods of caring, hence they perpetuate further the pensions gender gap. New modelling has shown that a family carer top-up in an auto-enrolled pension would substantially boost women's private pension wealth. Also, the suggestion of a voluntary earnings-related state pension addition—a fully portable auto-enrolled option that allows carer credits—would be simpler and would better meet women's need for extra pension savings. Amendment 96 provides the opportunity for an early review of issues affecting the pensions gender gap in CMP schemes.

I support the amendments in the group in the name of the noble Baroness, Lady Drake, which address similar and related issues. I beg to move.

Lord McKenzie of Luton: My Lords, Amendment 95 in this group is in my name. It seeks to press the Minister to make three important changes to the current auto-enrolment scheme—there are some overlapping issues in this. The changes are: to remove the threshold requirement for earnings over £10,000 to be auto-enrolled; to remove the qualifying earnings deduction; and to extend the threshold down to the age of 18 for workers. As NOW: Pensions points out, these would be positive steps in helping to narrow the pensions gender gap and would be a significant step in boosting participation in pension saving. This should be uncontroversial, as it goes with the flavour of the deliberations of the 2017 automatic enrolment review.

However, on timing, the Government's ambition is to phase in the abolition of the LEL, with broader changes to the framework, until the mid-2020s. We suggest that this is a weak ambition and urge the Government to reconsider. We recognise that the changes cannot all happen overnight, but the longer we wait, the more difficulty there will be in getting younger people into the savings habit. Abolition of the LEL and making contributions payable from the first £1 of earnings will help to build financial resilience. If implemented, these measures would eventually—I stress "eventually"—bring an additional 910,000 workers into auto-enrolment with, as we have heard, an additional £3.8 billion of pension savings. It would be a good first step in addressing the pensions gender gap.

5 pm

Baroness Drake (Lab): My Lords, I shall speak to Amendments 90 and 91, which carry further the spirit of Amendment 96, which was tabled by the noble Baroness, Lady Janke. My amendments call on the Secretary of State, within six months of the passage of the Bill, to conduct two reviews: on how legislation could provide for people to receive a contribution towards auto-enrolment pension savings when they are relevant carers—what is now popularly called the carers' top up—and on the sex equality impacts of auto-enrolment in workplace schemes and how legislation and policy could correct any inequalities identified.

I start by giving recognition to the DWP and the Pensions Regulator for the successful rollout of auto-enrolment. It is true that many more people, including women, are now saving, but various sources of data evidence show a persisting gender pensions gap. The message, whatever the source of the data, is the same. The gap arises from design features in the pension system and as a consequence of the systemic problems that too many women and carers face. In summary, carers are subject to a financial penalty in their income and pension because they are undertaking caring responsibilities, which is reinforced by stereotyping, cultural norms and employer behaviour.

Some newly published research on pensions by the Pensions Policy Institute, which was sponsored by the master trust Now: Pensions, puts the case for further reforms and reveals that on average, women have 55% lower pension income than men. The average annual private pension income for men aged 55 plus is £8,620; for women, it is £3,920—a considerable gap. Despite the record number of women in employment—now 72.4%—many will reach retirement age with significantly less. The figures vary, but they are in the same ballpark of £100,000 less saved than men. Women are more likely to work part-time or take time out of work while caring for children or, further down the line, to care for elderly or ill relatives, leaving them with interrupted pension contributions and limited earnings opportunities. Inequalities experienced during working-age life deliver lower incomes in retirement. Even when women work full-time, they still, on average, earn almost £6,000 less than men.

There are compelling figures here: 36% of women in the labour force work part-time. Of the 13.4 million employed women in the UK, around 3 million—23%—fall below the qualifying earnings threshold of £10,000 in any given job to get access to the benefits of auto-enrolment. Only about 37% of the population eligible for auto-enrolment are women.

The noble Baroness, Lady Altmann, is campaigning on how the tax system disadvantages a significant number of low-paid women and men, consequently reducing their pension pots. Millions of people at some point in their lives will have given up work or worked part-time to care, most of them being women. Carers' savings pots are not only smaller, but evidence shows they are often used to cover the cost of the caring they are undertaking. The economic contribution of carers is still insufficiently recognised in UK public policy.

We need women to have children. If they did not, the economic consequences would soon become apparent. We need carers to take responsibility for kinship children, saving the taxpayer considerable cost. If carers did not look after their elderly or disabled relatives, the health and social care cost borne by the state would rise exponentially. In fact, Carers UK estimates that the economic value of the contribution made by carers in the UK is £132 billion a year.

Caring responsibilities impact carers' participation in the labour market, but they also damage their long-term earnings potential—it just carries on through. It is estimated that for each year out of employment, the hourly wages of women decrease by approximately 2% for women with A-levels or above, and 4% for women with fewer qualifications. Amendment 90 is directed at a reform whereby a carer's financial credit is paid through the social security system towards their private pension. I will take a little time on this because there is quite a big community out there which believes that this is an important issue and really wants Parliament to hear its strength of feeling on it.

Prior to the introduction of the flat-rate new state pension in 2016, carers were credited with entitlements in both the first-tier basic state pension and the second-tier state earnings-related pension. However, now that the earnings-related system has transferred out of the state to the workplace pension provision through auto-enrolment, that second-tier carer's pension has been lost, It has just gone; it sort of fell through the crack in the totality of reforms. We had a hard-fought victory for women to secure the public policy principle that caring was an economic contribution for which pension credits were given in both tiers of the pension system—the basic tier and the earnings-related tier. Until that principle was restored, carers had been relatively disadvantaged, adding to the pensions gap. I am a bit reluctant to start in 1902, but if we start with the fight to get women these carer's credits in both the pension systems, when the earnings-related system was introduced in 1975, something called the home responsibilities protection was introduced, It was not as good as a full carer's credit but it was a start, although it applied only to the basic state pension. Then in the Conservatives' Social Security Act 1986 they planned to extend that home responsibilities protection to the second-tier earnings-related pension but they never laid the regulation, so it never happened.

Rowing forward, we had the Child Support, Pensions and Social Security Act 2000, which introduced the second state pension to replace the existing SERPS earning-related element. It provided for carer's credit for the second earnings-related pension in addition to the state pension. That was a victory. A lot of hard work went into winning that principle, and it applied to carers who looked after a disabled person for more than 35 hours a week or a child under six, but still people argued that it should be improved again beyond that. In the Pensions Act 2007, which, importantly, brought in a major part of the state and auto-enrolment reforms, carer's credits and how they operated for the basic state pension and the earnings-related element were improved considerably for carers of children up to the age of 12 and the qualifying threshold for carer's credits for caring for disabled people was lowered to 20 hours.

Those principles, that you credit carers because it is an economic activity—it is a real contribution to the economy—and that you do it in both the basic state pension and the earnings-related pension, were a victory that people thought they had banked, but suddenly, as a consequence of the reforms, that crediting is only in the basic state pension—it no longer exists through auto-enrolment and workplace pensions. The Fawcett Society, along with an increasing number of other organisations—there is quite a build-up of consensus around this—supports the introduction of a carers' top-up, re-establishing the principle that people thought had been achieved and consolidated in 2007.

A seminal report from Insuring Women's Futures, the product of a voluntary market-led programme under the Chartered Insurance Institute, looked at improving women's financial resilience. It has brought in a range of people—business leaders, policy experts, regulation experts, academics and so on—and looks at the root causes of women's lack of financial resilience.

I am probably using a lot of words to say it, but the report basically says that more needs to be done to allow all women access to pensions, to support women in attaining an adequate pension—reflecting their whole contribution to society and the economy—and to allow them to enjoy pensions parity in the workplace. It also says that the complexity of pensions, together with the wider financial risks in life that have an impact on women's pensions journey, means that women need differentiated support and guidance at moments that matter, such as when they step out from or step down in their engagement with the labour market because they are doing the economically important job of caring.

Much was achieved by auto-enrolment—it is tempting to say that I would say that—and the Government were right to focus their energies on its successful implementation. I never argued with a Conservative Minister who said, "That is the priority and that is what we must do"; that was right. However, this gap in the pension position of many women relative to men persists, and there is a growing consensus—it is not just a few arbitrary voices—saying that the issue needs fresh attention.

A principle embedded in the reform of state and private pensions is that women should accrue retirement income in their own right. That is reflected in the fact that, since 2016, women no longer accrue state pension rights through their spouse's entitlement and that, in a DC world and with pension freedoms, women's hopes of depending on their partner's accrued long-term savings are much weaker. The environmental factors shout out that the Government have been successful in consolidating auto-enrolment. However, this is an area of outstanding weakness and needs a new look because, in summary, women make a huge economic contribution by caring, for which they face financial penalties. There is an expectation that they will accrue pensions in their own right, but the support given to them to achieve that still has significant weaknesses.

My amendment and that of the noble Baroness, Lady Janke, ask the Government to review and report on the nature of the pensions gap and on further measures to address it, because the demographics clearly show that the one thing that the state depends on is that women will be carers—even more so going forward. However, as a consequence, they end up with reduced financial resilience when they come to retirement.

I am conscious of there being competing issues on Report; there are some very important issues in this Bill that noble Lords wish to return to. I am trying to

[Baroness Drake]
take that into account. There is, however, a growing consensus. It is not aggressive; it is just saying—as I saw when I ran through the history of how we built up the carer's credit—that the Government need to give this attention. There is consolidated auto-enrolment and a range of areas where the Government are reviewing what they can do, but they have not put centre stage how efficiently this is working for carers; they need to look at that.

Again, conscious of the competing demands on Report, I urge the Government to respond to the noble Baroness, Lady Janke, and myself as positively as they can to show those communities that are building up together—the gender alliance can be quite formidable when it gets truly organised—that there is a responsiveness that says, "Yes, we will review these issues." I have loads of emails that say, "I am so glad you are raising this", and, "Say this and say that." I have probably overindulged and not covered half the list of things that people want to say. They will, however, be listening to the Government's response because they want the Government at least to accept that they should give some attention to this issue again.

5.15 pm

Baroness Sherlock (Lab): My Lords, I want to ask a few questions on the back of that. I thank my noble friend Lady Drake and the noble Baroness, Lady Janke, for raising these issues. It is good to hear some attention being given to the fact that we have a significant problem about women and pensions. I would have liked to see the Bill take the opportunity to do something for the women born in 1950s who lost out so much when the state pension age was raised so sharply. Given that it has not done that, at least the calls for review may give an opportunity to look at the wider range of issues.

The statistics we have heard are really quite stark. If there is that huge a gap in pension wealth between men and women, the situation will only get worse. It is clearly something that the Government need to do something about.

I want to pick up on a couple of specifics. One is the issue of people with multiple jobs below the earnings threshold. This is the point at which I miss most acutely my friend Lady Hollis of Heigham, who raised this at any given opportunity. I feel that her memory is forcing me to do so now, otherwise I could not go back to my office and sit down with any peace. I ask the Minister to comment on that. We see people with multiple jobs—many are women, of course—none of whom make the threshold but who would be over the threshold if their incomes were added up, not getting into auto-enrolment. I worry that this group will keep rising as a result of part-time working and zero-hours contracts. Even the DWP, for example, encourages those on universal credit to take extra jobs to top up their hours or income. What are the Government doing about this? Do they have a sense of the scale of the problem and the direction of travel?

Secondly, I want to say a word about my noble friend's case on carers. Clearly, women are more likely to work part-time because of caring responsibilities. That is a clear issue for public policy. A society needs women's reproductive capabilities and their caring work. Women, in turn, deserve to be able to live adequately in retirement. I was delighted to hear my noble friend detail how we got here, not just because I probably have more of an appetite for social security detail than is strictly socially acceptable. If we do not take the time to work out how we got here, we will lose this in future. Those rights were hard-won. It took a long time, step by step, to get the caring responsibilities of women recognised in all parts of the state pension system; then they somehow got lost in the Government's reforms. I am sure that that was not the intention and I have no doubt that the Government will come back and say, "Yes, but people will get these bigger amounts and more of them will get a full pension", but that makes no difference. One would get those whether one was a carer or not. They have still lost any recognition of those caring responsibilities in the second state pension. Have the Government looked at the idea of a carer's top-up, which has been around for a while? If so, what is their response to it? If they do not like it, what is their proposal for addressing this issue?

On Monday, we discussed in Committee Amendment 78 in the name of the noble Baroness, Lady Altmann. It recommended that a member of a scheme should not be allowed to use the pension freedoms to transfer out without the consent of his or her spouse or civil partner. I asked whether the Minister would go away, talk to the department, take some advice and return to it during today's debate, which she kindly agreed to do. Can the Minister give us a reaction? Has the department established that there is an issue, and what is it doing about it? That would be really helpful.

My noble friend Lady Drake said the gender pay gap will not close until 2050 and pension parity will therefore not be reached until something like 2100. We just cannot wait that long. This is a matter of public policy, economics and societal need, but it is also a basic issue of justice. What are the Government going to do about it?

Earl Howe: My Lords, the amendments tabled in the names of the noble Baronesses, Lady Janke and Lady Drake, and the noble Lord, Lord McKenzie, all concern automatic enrolment into workplace pensions.

Amendment 87 would lower from 22 to 18 the minimum age at which a qualifying worker would be eligible to be automatically enrolled by making a change to the Pensions Act 2008.

Amendment 88 would require the Secretary of State to lay a report on the effectiveness of our pension reforms within six months of this Bill becoming law. That review would mandate government to consider the minimum age at which qualifying workers must be automatically enrolled, the minimum level of pension contributions and whether existing legislation offers sufficient opportunity for low-paid workers to save for retirement. The Secretary of State would then have to make a recommendation about whether to bring forward new legislation in the light of its findings.

Amendment 95 would make changes to the criteria for a qualifying worker in automatic enrolment, known as a jobholder. These would lower the minimum age

for a worker to be automatically enrolled from 22 to 18, abolish the £10,000 automatic enrolment trigger and make pension contributions payable from the first £1 of earnings.

Perhaps I may begin with the proposed changes to the automatic enrolment criteria. The amendment of the noble Lord, Lord McKenzie, would abolish the £10,000 automatic enrolment trigger. The Government review the operation of the trigger annually under the statutory automatic enrolment thresholds review. That approach means that a range of factors can be assessed, including affordability for employers and whether it pays to save for individuals. Since 2014-15, we have frozen the trigger at £10,000, which has expanded coverage each year due to wage growth. In the tax year 2020-21, this will see an extra 80,000 people brought into pension saving, of whom around three-quarters will be women. This is surely one policy area where we should aim to ensure that we proceed on the basis of sound evidence. We do not have evidence at this time that would support the abolition of the trigger. So, I am afraid that the Government cannot support this amendment.

Turning to the amendments in the names of the noble Baroness, Lady Janke, and the noble Lord, Lord McKenzie, which would reduce the minimum age to 18 and require pension contributions to be paid from the first £1 of earnings, the Government's 2017 review of automatic enrolment—*Maintaining the Momentum*—has already set out our next steps in this area. The core proposals are a reduction in the minimum age for being automatically enrolled to 18 and the removal of the automatic enrolment lower earnings limit.

Our review involved extensive engagement with interested parties, including consultation, and was supported by an expert advisory group. Its conclusions were robust and remain correct. However, we have also been clear that these ambitions must be subject to learning from the contribution increases and finding the right approach to implementation. The timetable cannot be forced without risking both the consensus that we have achieved and the very significant policy achievements that have, rightly, been lauded across this House. Therefore, again, the Government cannot support these amendments.

I turn now to Amendments 90 and 91, tabled by the noble Baroness, Lady Drake, and Amendment 96, tabled by the noble Baroness, Lady Janke. They relate to the gender pensions gap and automatic enrolment. Since the introduction of automatic enrolment, workplace pension participation for all women employed full-time in the private sector— not only those eligible for automatic enrolment—has increased from 35% in 2012 to 83% in 2019. This is now the same as the participation rate for men, compared with 2012 when the participation rate for men was six percentage points higher. Our aim remains to increase the level of retirement saving across all groups. The 2017 review ambitions strengthen the framework of workplace pension saving for lower-paid workers, many of whom are women working part-time. As I have already made clear about the implementation, we will remain guided by evidence.

Amendment 90 would require the Secretary of State to undertake a review within six months of passing the Bill. The review would consider how to legislate to provide automatic enrolment contributions to people with caring responsibilities as parents or carers, with reference to a target group.

The new state pension system—introduced for people who reached state pension age from 6 April 2016 onwards—took forward the existing national insurance crediting arrangements. These included the credits brought into effect by Section 23A of the Social Security Contributions and Benefits Act 1992. The majority of people providing care and those who build a qualifying year for their state pension through the carer's credit are women. The design of the new state pension means that, on average, women, those in lower-paid work and self-employed people receive higher outcomes than under the previous system.

More than 3 million women stand to receive an average of £550 more per year by 2030 as a result of the recent reforms. Women benefit most from the new state pension. Average weekly state pension payments for women are £152.44 under the new system, compared with £135.24 under the previous system. Outcomes are projected to equalise with those for men more than a decade earlier than they would have done under the previous system.

Under the system that operated from 2010 to 2016, people who were caring for more than 20 hours a week could claim the carer's credit for additional state pension in addition to building qualifying years of the state pension. The full rate of the new state pension is more than £40 a week higher than the full basic state pension. As a result, unless someone had received carer's credits for the majority of the 35 years of national insurance needed for the state pension, it is unlikely that they would have been in a better position than they will be now under the new state pension.

A key objective of the new state pension was to increase outcomes for women and lower-paid earners, accelerating the equalisation of state pension outcomes for men and women. The new state pension is successfully achieving these objectives. The settlement made in 2016 is building a clearer, simpler foundation for people's private pension saving and we do not intend to reopen it.

I understand that the noble Baroness, Lady Drake, is concerned that parents and carers who are not working will miss out on automatic enrolment. Most parents and carers will work before or after periods of caring, or will combine part-time work with caring. The introduction of automatic enrolment has helped workers to build on the foundation of the state pension, while implementation of the 2017 review measures will enable them to build up more savings when they are working, improving their financial resilience in retirement. The amount being saved would be transformative: a national living wage earner with a 10-year career break could see an 88% increase in their pot size at retirement.

Amendments 91 and 96 would require the Secretary of State to conduct a review within six months of the Bill becoming law, concerning the sex equality impacts of the current framework. I always read amendments carefully but, if I may speak on a slightly lighter note, Amendment 91—tabled by the noble Baroness, Lady Drake—shows how important it is to read to the end of every sentence. When I first looked at it,

[Earl Howe]
I thought that it sought to ensure that the Secretary of State conducts a review of differences between men and women, which, it struck me, could be rather a lengthy exercise—but that is not the case at all. If one reads the amendment in full, it is a model of clarity in referring to a number of specified groups and I want to be serious in addressing it.

Amendment 91 would require the Secretary of State to make recommendations on how legislation and policy could correct any inequalities in automatic enrolment. Amendment 96 relates to the impact of public policy regarding pension schemes on women and the action being taken by government to close the pensions gap between men and women, with recommendations for possible further legislation.

The Government already carry out and publish a range of analysis and evaluation in relation to these matters, and benefit from valuable external evidence. The department currently evaluates the gender impact of changes to automatic enrolment policy on participation—in our annual thresholds review, for example, where this year we estimated that three-quarters of the employees made eligible by the freezing of the trigger were women. We measure and publish statistics on participation rates by gender. We carry out regular monitoring of the rates of stopping saving by gender. We also draw on a wide range of evidence across and outside government on the gender pensions gap, while working closely with the Government Equalities Office.

All that should, I hope, indicate to noble Lords that this is not a matter that we will just let drift and then monitor at some point in the future. We do so regularly as we go along, and in some detail. Outside of DWP's evaluation of automatic enrolment—AE, if I may call it that—data and analysis of the gender pensions gap is produced from various sources across government. We will continue to draw on this evidence alongside our developing evaluation of AE, post phasing, to assess the impact of AE on the gender pensions gap.

5.30 pm

The noble Baroness, Lady Drake, mentioned the need for differentiated support for women at the moments that matter. The noble Baroness, Lady Sherlock, asked, essentially, what more the Government are doing in this area. I refer in particular to the Government Equalities Office, which held a joint listening workshop with the Money and Pensions Service in the summer on women and personal finance. That fed into the development of the national financial well-being strategy, which was launched in January with gender as a cross-cutting lens. The Money and Pensions Service has set up challenge groups, including on gender and financial well-being, tasked with creating bold and innovative proposals. The Government Equalities Office will directly support the gender challenge group, feeding into the development of the action plan on women's financial well-being.

We also need to address the main causes of the gender pensions gap, namely differences in working patterns and earnings between men and women. The Government remain committed to challenging gender stereotypes that result in women taking on a greater role in caring than men, and minimising the gender pay gap. Our gender equality road map, published in July, sets out how we will do this.

Alongside this, the Money and Pensions Service has made financial well-being for women a cross-cutting lens in its strategy for financial well-being; as I just mentioned, it has set up a challenge group. We continue to monitor the impact of private pensions reforms on women and we would welcome hearing a range of insights and perspectives from representatives of employees, employers, unions and consumers in addition to the pensions industry.

It would be very valuable to us if the noble Baronesses, Lady Drake and Lady Janke, continued to work with the Government in helping us to deliver on our strategy to tackle the important issue of the gender pensions gap; I am sorry, I do not mean to miss out the noble Baroness, Lady Sherlock, in that. With that in mind, I hope that the noble Baroness, Lady Janke, will feel able to withdraw her amendment at this stage.

Baroness Drake: I want to take the first opportunity to come back on this because I am conscious that a lot of people are interested in this debate.

I am a little disappointed that the major part of the Minister's contribution was a bit of a push-back, saying that the Government are all over this and that this is fine when evidence for that is not there. He did become more conciliatory at the end; I hope that the department find a way to bring together an eclectic group of people.

I simply disagree with some of the things that the Minister said. In reference to the small pots, the DWP did a great deal of work on the earnings threshold. It was set at a much lower level based on the DWP's work, though perhaps not under the current Administration. In the review that led to that threshold going up—originally, it would have gone up to as high as £12,500 if a stroppy group of Peers had not turned up every time automatic enrolment earnings threshold regulations came before the House; in the end, somebody waved the white flag and said, "Oh, freeze it, we can't face that lot every year"—the reason given, which is on the record, is that if you take it lower than £10,000, it produces small pots, which are inefficient to the industry. Well, that is irrelevant. This is a piece of public policy for mass coverage. That is what made me so angry. It was not based on a gender analysis; it was based on inefficiency in the industry. I invite noble Lords to go back to the report that gave the reason for raising that earnings trigger. There is evidence there. It may be that more modelling or more debate about the behavioural impact of coming significantly below the trigger is needed, but that work was done by the DWP. It may have a different view now but its view a few years—perhaps 10 years—back presented the evidence in a different way.

I do not disagree with the Minister that automatic enrolment has had a real benefit for women—if they are in the eligible population. If they are not, they cannot be among the people gaining from the upside of auto-enrolment. Many carers are precisely the people who are not in the eligible population.

I entirely accept that for a lot of women, an absolute improvement arose as a result of the new state pension, but the pension gap—the pay gap—is about relativity. If you give a man a pay rise of £10 and you give a

woman a rise of £5, you can stand up and assert, "The woman is £5 better off: let us celebrate!". What you have missed is that the pay gap has increased, because the man got £10. The benefits of the single state pension improve the relative position of a lot of people, not just the low-paid but huge numbers of people right across the public sector in DB schemes and generous DC schemes who, for a most modest increase in their national insurance, got that improvement in the state second pension together with the benefits of auto-enrolment or their defined benefit pension system as well. Therefore the relative position of carers was disadvantaged. Yes, their absolute position over a certain period—or after a certain period, although that is not the case—has improved, but the relative relationship did not, because everybody had that benefit from the reform to the state second pension.

I do not want to dwell on that, but there is a community out there who, if I did not do them justice and push back, would say, "Jeannie, why did you just accept those arguments?" I take the Minister's final remarks about working for the Government. There are groups out there in industry, employers, academics and gender groups who want to work this out with the Government. I hope that the Government can find a way fairly soon to bring together a working group, or whatever. There is a feeling, "How does one communicate to the Government the growing feeling on the gender pension gap?" I felt that I had to push back, because there was a slightly dismissive approach that there was no gender pension gap problem, and there is.

Earl Howe: I hope that the noble Baroness will not go away with that impression. We are aware that there is a gap to be bridged. The key point I would ask her to reflect on is that, despite the desire to go faster in this area, there is a risk in doing so. We have learned lessons from the phased approach that we have already adopted. It was the right approach. The gradual approach brought everybody on side. We gathered evidence in the process; we are still gathering that evidence, and the evidence-based approach is the other watchword to bear in mind.

Baroness Sherlock: I will follow up a couple of questions that I asked the Minister: one was about mini-jobs, and I do not think that he responded to the other—I am sorry if I missed it—on the issue of spousal consent and pension freedom sharing. In Grand Committee on Monday, we were having a conversation about this. The Minister pushed back quite hard. I suggested that she go back to the department to establish whether there was a problem, and the noble Baroness, Lady Stedman-Scott said:

"The suggestion made by the noble Baroness, Lady Sherlock, is very helpful. I would be happy to do that before we come back to this on Wednesday"—[*Official Report*, 2/3/20; col. GC245.]

The reason I suggested that is that I knew we were going to have a debate on women's pensions and therefore we could have it informed by some information. There is not much point in our having assurances if they do not happen. Is there anything to be said on that?

Earl Howe: I understand from officials in the Ministry of Justice that there has been a relatively small number of cases where the pension scheme member has taken advantage of the pension freedoms to act in a way that frustrates the intention of an attachment order. However, I would like to establish what evidence there is of the scale of the wider problem, as outlined by my noble friend Lady Altmann and the noble Baroness, Lady Drake, in our debate on Monday, before deciding on the appropriate government response. I can tell the noble Baroness that my officials will work with others across government to gather the available evidence.

Baroness Janke: I thank the Minister for his assurances and for the information he gave. I am sure that the Government want to pursue the evidence-based approach, but the actual situation is very hard for many women at this moment. I welcome his offer to work with the Government on this. As the noble Baroness, Lady Drake, said, many groups will be interested in doing so; I hope that we can engage them in positive working on this issue.

A much larger proportion of those now in pensioner poverty are women because their caring responsibilities were never represented in the past. I feel that there has to be a recognition of the current situation while agreeing that we must move forward and take people with us on this.

On the amendments in the name of the noble Baroness, Lady Altmann, it is not only a question of spousal consent to an attachment order. It is often not possible to make a pension settlement because it takes place before the process reaches that stage. Spousal consent is essential because, as others have said, once the money has gone, it is extremely difficult to recover it. The ABI has written a briefing on divorce and pensions; I recommend it to the Government. Pensions in divorce is another issue that is extremely important to women.

Again, I thank the Minister for his response. I beg leave to withdraw the amendment.

Amendment 87 withdrawn.

Amendment 88 not moved.

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, I understand that Amendment 89 has already been debated even though it did not appear on the groupings.

Amendments 89 to 92 not moved.

Amendment 93

Moved by ***Baroness Altmann***

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

"Suitability of pension schemes for automatic enrolment

(1) The Secretary of State must by regulations made by statutory instrument make provision to require that, where an employer makes arrangements by which a jobholder to whom section 3 of the Pensions Act 2008 applies, or a worker to whom section 9 of that Act applies, becomes an active member of an automatic enrolment or other pension scheme, the employer and the trustees, managers and administrators of the scheme have ensured that it is suitable for low-paid jobholders or entitled workers such that they are treated fairly in connection with their contributions.

(2) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament."

Member's explanatory statement

This amendment aims to ensure that employers, trustees, managers and administrators have assessed the scheme they use for auto-enrolment to ascertain that it treats low paid staff fairly and does not force them to pay additional contributions to replace tax relief they have lost.

Baroness Altmann: My Lords, noble Lords will understand that I believe that this amendment is vital to the ongoing success of automatic enrolment.

I add my congratulations to the noble Baroness, Lady Drake, for the work that she did with the original Pensions Commission, which set up automatic enrolment. It has been a success. My amendment seeks to build on auto-enrolment by introducing protections particularly for low earners—at least 70% of whom are women—and provides that the Secretary of State must make regulations that require the trustees, managers, administrators and employers of these workplace pension schemes to ensure that the scheme is suitable for low earners and treats them fairly.

I seek to introduce this into the Bill because, currently, more than 1 million women who are earning below the personal tax threshold, which is around £12,500 in any one job, are required to pay—unwittingly and unknowingly in probably all cases—25% more for their pension because their employer has chosen a particular pension scheme that is not suitable for them because it charges them so much extra.

The noble Lord, Lord McKenzie, referred to addressing pensioner poverty and undersaving. Clearly, the fact that the lowest earners in the country have an extra 25% added to the cost of their pension, which has to come out of their pay, makes them more likely to have affordability issues and could, potentially, lead to them opting out of the pension because of the extra costs. These are, generally speaking, the people who most need help to build up a pension for later life and who are at greater risk of pensioner poverty. That is what the auto-enrolment system was meant to address, given that we have the lowest state pension in the developed world.

5.45 pm

Therefore, there is an important lacuna in the automatic enrolment framework, in that an employer merely has to set up a pension scheme without having to decide, investigate or even consider whether the scheme is suitable for its staff. I am particularly concerned about low earners. The types of scheme that they are being put into are better for higher earners and higher-rate taxpayers—and better for the scheme providers—because they bring more money into the scheme. For low earners, however, there is a significant issue.

There is understandable concern about putting too much burden on employers. People say, "It is bad enough that they have to set up pension schemes and pay into them for their staff even if they employ only one person, so let us make it easy for them." I accept that, but a social injustice in the current system has worsened: it was not such a problem before the changes in personal tax thresholds. I have been trying to find a resolution for it for several years and nothing has changed.

I felt, therefore, that this Bill might provide the opportunity to place such a requirement on employers. I have been working with an industry group, the Net Pay Action Group, which is attempting to persuade the Treasury to ensure that Her Majesty's Revenue & Customs uses the annual reconciliation of individuals' PAYE data to identify low-income workers making pension contributions under the net pay scheme and to provide tax relief equivalent to what they would have received in another scheme.

The current problem is that, if their employer uses one of the master trusts that mostly operate a net pay arrangement, as it is called, low earners have to pay their own tax relief and cannot in any circumstances reclaim it from the Treasury. This is about £150 a year, and one of the arguments used to justify it is that it is not a lot of money. Frankly, however, to a woman who is a low earner, £150 is not nothing. Even £50 a year is not nothing. It is money that they would have if their employer had used a scheme like NEST, or a scheme that operates a relief-at-source system, where they get the tax relief that they are entitled to automatically.

Even if there was a resolution—there is no sign of that at the moment—every month, these workers are being charged an extra amount that is going into their pension scheme, unbeknown to them. The sooner we sort this out, the better. Notwithstanding any resolution, there should be an obligation on an employer that is putting its staff into a pension scheme—given that staff cannot control which scheme their employer uses—to set up a scheme that is suitable, specifically for low earners but one could expand that more broadly.

I hope, therefore, that noble Lords will recognise that this would be a way to improve the operation of auto-enrolment. For example, if the employer has one or two low earners but most of the staff are highly paid and it wants to use a net pay scheme, it would be fine if the employer paid those few extra pounds into the scheme on behalf of its low-paid staff. High earners do not have to reclaim the higher-rate relief in one of these schemes and it may be considered more convenient for those high earners, but the problem is for those earning below the personal tax threshold. Nobody is compensating them for the fact that they are being charged 25% too much. We have capped charges on default funds in pension schemes at 0.75% a year, yet this is 250 basis points that these women are paying extra for no good reason. They are not getting a better pension; they are getting the same as the others.

I would be grateful if my noble friend could help me to understand whether the Government might consider accepting this or whether they have other plans to address urgently the problem of low-earning women paying too much for their pensions in their employer's scheme, in what I genuinely believe is a very successful auto-enrolment system that I want to see thrive. Unfortunately, this has the potential to damage confidence in auto-enrolment significantly if more and more women are affected; as I say, that number is probably well over 1 million now. I beg to move.

Baroness Bowles of Berkhamsted: My Lords, I signed this amendment and I do not think there is a great deal to add to what the noble Baroness, Lady Altmann, has said. I am sure we are all familiar with the phrase that two wrongs do not make a right. As has been explained, this is one of those instances in which two rights have ended up making a wrong, in that auto-enrolment and raising the tax thresholds were right but have resulted in more and more people falling into this trap. If we are to believe all the things we read in the newspapers about the Budget, it may be that more right things will be done, in terms of tax thresholds, that will then trap more people in this wrong of paying more than they should for their pension. These people would be better off if they were not in the scheme but in a private pension scheme because there would be mechanisms for them to get that tax relief.

The problem could be adjusted through the tax system because it knows who they are. There are various ways in which it could be addressed. The noble Baroness, Lady Altmann, has put forward one in which it is up to employers to seek out the solution. If that is regarded as too onerous, something else must be done because this really is very bad, once again hitting the people who always seem to be at the rough end of every deal and are predominantly women. I am not quite sure how it is taken into account in universal credit—whether it asks, "Are you paying more for your pension than you should?"—but I would not mind betting that many of them will be the same people who suffer at every twist and turn. I therefore strongly support this amendment.

Lord McKenzie of Luton: My Lords, I, too, support this amendment. We should congratulate the noble Baroness, Lady Altmann, on the diligence with which she has persisted on this matter for quite a long while. As she hinted, she was responsible for convening an industry group that spent a lot of time digging into this to make sure its focus was right.

The reality is clear. There are two systems giving tax relief and no reason in principle why they should not both deliver the same result. One does not for low earners at the moment. Which of the two systems you are in depends on your employer's choice. That simply cannot be right. As the noble Baroness said, there are ways of dealing with this. I understand that the Treasury has set its face against that to date. Of course, for the Treasury, the downside is that providing a bit more tax relief means having a little less revenue. However, we are talking about the lowest paid, who are being disadvantaged by this. It is about time that this was brought to a halt.

Earl Howe: My Lords, I am grateful to my noble friend Lady Altmann for her amendment. I am well aware that she is a passionate and long-standing campaigner on the issue of lower-paid workers automatically enrolled into a workplace pension who may not benefit as much as other lower-paid workers for their pension saving.

As my noble friend will know—I hope she will not mind my saying this en passant—pensions tax relief is a matter for the Treasury, with the differing treatment of people in net pay arrangements and relief at source pension schemes determined by the Finance Act 2004 which, strictly speaking, is outside the scope of the legislation before us. That does not prevent me giving her as full an answer as I can.

Automatic enrolment legislation defines which qualifying workers are to be put into workplace pensions by reference to their age, earnings level and their being working or ordinarily working in the UK. I appreciate that this is essentially a probing amendment and that the precise wording is of secondary importance, but its reference to the low paid is not a definition recognised in the Pensions Act 2008. It would make it very complex and burdensome for employers accurately to identify the group to be covered by the proposed regulation-making powers.

Automatic enrolment has always sought to balance its core aim of helping working people build up their retirement savings with an implementation approach that recognises the costs and administrative burdens that will inevitably fall on employers. We are mindful that those duties must be proportionate and restricted to the minimum necessary to achieve our policy objectives. That is why pension scheme choice under automatic enrolment is reserved to the employer, who is required to use a scheme that meets minimum quality standards set out in legislation. Tax relief is only one of the factors that an employer should be considering when choosing a scheme for its employees, alongside whether it will accept all its staff, how much it will cost for the employer to administer and whether it will work with the existing payroll systems.

The employer's decision will be informed by detailed guidance provided by the Pensions Regulator via its automatic enrolment compliance website, including information about the tax implications of different types of scheme. We should remind ourselves that there is guidance on the Pensions Regulator's website to help employers understand the impact of scheme choice on lower earners below the personal allowance. I am well aware of how much assistance my noble friend gave on this when she was Pensions Minister.

Consequently, the current legislative framework is not set up to allow government to impose broad, undefined requirements on pension scheme trustees, managers or administrators in the way proposed by the amendment. Employers have duties under automatic enrolment, and they select a pension provider from the marketplace, based on their legal obligations towards qualifying workers and the commercial needs of the organisation.

The suitability of an automatic enrolment scheme is determined primarily through statutory quality requirements. Many employers will choose a master trust scheme, which is subject to an additional regulatory framework. All automatic enrolment schemes are registered pension schemes and their members are further protected by the broader legislative framework for occupational and personal pension schemes.

6 pm

I understand my noble friend's desire to see resolution of this issue and I know that she has raised it with the Treasury. For the reasons I have given, I am afraid that I cannot accept her amendment, but I hope she will welcome the new Government's manifesto commitment

[Earl Howe]
to carry out a comprehensive review into how best to fix this complex issue. The Government believe this review is the right way to move forward, and Treasury colleagues will make announcements on the next steps in due course. My noble friend is always very supportive and constructive in her approach to policy issues. I hope she will therefore help us to fulfil our intention of identifying how best to address the operation of pensions tax relief, both as we proceed with the comprehensive review and, in the first instance, if I may suggest, by withdrawing this amendment.

Baroness Altmann: I thank my noble friend for his response. I welcomed, very much, the commitment in the manifesto to look at this issue. However, I hope he will forgive me if I suggest that this is not necessarily a matter just for the Treasury. Tax relief is, of course, a matter for the Treasury but the duties of schemes, trustees, IGCs and employers is a matter for the Pensions Regulator. Also, auto-enrolment falls under the Department for Work and Pensions. Might it therefore be possible—I humbly request this of my noble friend—to go back to the department to consider whether this issue of suitability could go broader than just tax relief? It could include all sorts of other areas: for example, an employer might choose a scheme that the majority of the workforce might not like to be in, but there is no mechanism for them not to be put into it.

If that is considered too difficult, I certainly take the point on low earners. This is a probing amendment and I would, for example, be happy to specify those earning below the personal tax threshold—that is really what we are talking about and it could be addressed. I understand and recognise that there is guidance for employers on the Pensions Regulator's website but the requirements for master trust authorisation, or the requirements put on IGCs and trustees of these pension schemes, do not include taking any concern for the extra costs imposed on those earning below the personal tax threshold. One wonders how value for money could be confirmed by those running pension schemes if many people in those schemes pay 25% more than they would if they were in an alternative scheme. There is a requirement for a value-for-money assessment but it does not seem to take account of these low-earning women.

I would be delighted to help the Government fulfil their aim of addressing this issue. Notwithstanding that, I would be grateful if my noble friend might consider whether there should be some extra duty. If it is not just on employers—I take that point and I mentioned it in moving the amendment—at the very least the trustees, the IGCs and the regulator know what is going on, even if in most cases the small employer does not. I have seen the wording on the Pensions Regulator's website; it is not really clear, if you are someone who does not know what this is all about, that actually it means that because of the scheme you have chosen, your low earners will pay 25% more than they otherwise would.

Whether or not we can address this in the Bill—I hope that maybe we can—I am grateful to noble Lords who have supported the amendment. I am also grateful to my noble friends the Ministers, and the department, for having taken the time to continue to discuss the issue. I beg leave to withdraw the amendment.

Lord McKenzie of Luton: I heard the Minister's reply, which seemed a recipe for no action—not this year or next. Given all the hard work that has gone into developing thoughts on this, that does not seem fair. If we are saying that the legislation—or the regulation—is not fit for purpose as it is, why do we not change it? Whatever happened to taking back control?

Earl Howe: I promise that nothing I said was intended as a recipe for no action. The problems that my noble friend articulated well relates to how we solve this problem, not whether we are committed to doing so. Unfortunately, it does not admit of a straightforward answer. If it did, we would have solved it long ago.

Amendment 93 withdrawn.

Amendment 94

Moved by ***Baroness Altmann***

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

"Multi-employer pensions scheme

The trustees of a multi-employer pension scheme may cancel a debt which became due from a departing employer before the coming into force of this section in relation to the scheme under section 75 of the Pensions Act 1995 if—

(a) failure to pay the debt would not materially reduce the scheme's assets relative to the estimated debt in relation to the scheme,

(b) the majority of the debt relates to liabilities in respect of members working for employers no longer participating in the scheme,

(c) the employer has not done an act or engaged in a course of conduct that detrimentally affected in a material way the likelihood of accrued scheme benefits being received (whether the benefits are to be received as benefits under the scheme or otherwise),

(d) at the time of the cessation of the employer's participation in the scheme, the scheme was estimated to have sufficient and appropriate assets to cover its technical provisions and the employer had no reason to believe there was a significant scheme deficit,

(e) the employer has been operating as an unincorporated business and the owner would face personal bankruptcy, or the employer has been operating as a small business which would become insolvent, if required to pay the debt,

(f) the debt is below a de minimis threshold in relation to the size of the overall scheme liabilities, as estimated by the trustees or managers on advice of the scheme actuary as if the whole scheme had been winding up at the time the debt was treated as becoming due, and

(g) the employer has always taken all reasonable steps to fund the scheme as demanded by the trustees before the employer cessation event."

Baroness Altmann: My Lords, perhaps I should apologise for taking the Committee's time on issues that I feel have an opportunity to be resolved in the Bill. I hope that noble Lords will understand that I am doing this because I want to see pensions work better, and I care passionately about a system which I believe works really well in general. but there are areas that are causing significant problems which we may be able to address.

The issue at hand in this amendment is directly relevant to the Bill. It is about multi-employer pension schemes, where the current legislation has unintended consequences and causes significant damage in ways that it was never designed to do. There may be a way in which we can try to address that. I am not claiming that the wording of this probing amendment will fit the bill, as it were. However, in the plumbing multi-employer pension scheme—the one I have most experience of, but by no means the only one; there are a number of charity schemes as well—the trustees seem to be trying to force good employers into personal insolvency and homelessness to pay into the scheme the cost of buying annuities for workers who never worked for them. This is in a scheme which has always been said to be fully funded, with enough money to pay all its pensions: in the December 2019 employer update it was reported to be funded to 108%. It had an 8% surplus at its last measure. The scheme will not buy the annuities that these people's homes will be taken away to pay for, while the employers have paid every penny of the contribution ever requested by its trustees.

In this pensions Bill we are dealing, quite rightly, with new measures for the Pensions Regulator to deal with recalcitrant employers, who may have deliberately decided—or the regulator may believe have deliberately decided—not to put enough money into the pension scheme. We are introducing measures which I have tried to build upon in my amendment, which gives reasons why the regulator may not impose a contribution notice, for example, on such a recalcitrant employer. I am trying to look at the conditions we might able to introduce in multi-employer schemes, which go back some time—for example, the ones I have looked at go back to the 1970s—and used to have 4,000 employers. Many of them have been allowed to leave or have failed. Now there are around 400 left. These are responsible for all the people who worked for those thousands of other employers, as well as the very few who worked for them.

I wonder whether we can find ways that mimic the easements for recalcitrant employers to salvage the situation for these often unincorporated businesses, such as partnerships which have been in a family for decades or very small companies. If the owner or the individual retires, they crystallise the Section 75 debt. If they try to pass the business to their son, they trigger the Section 75 debt. If they incorporated from a partnership to a company, they triggered the Section 75 debt but nobody ever told them. The size of the debt they owe is immaterial to the survival of the scheme. I am trying to see whether we can use a materiality test, a solvency test or a reasonableness test to deal with this unintended consequence of Section 75 debt, which had a strong and right purpose: if an employer was to walk away from a pension scheme, it needed to make sure that it had put enough money in to meet its promises to all its staff.

I have tried to introduce conditions through this amendment which would permit trustees not to collect the Section 75 debt. They are: if failing

"to pay the debt would not materially reduce the scheme's assets relative to the estimated debt";

if

"the majority of the debt"

owed by the employer is for orphan assets—workers who never worked for that employer, so the main employer could not try to use this provision; if the employer has never tried to avoid the debt or to damage funding; if

"at the time of the cessation"—

the Section 75 crystallisation—the scheme was fully funded on technical provisions; if the employer is unincorporated or a small business, and we may need to add partnerships, and faces personal bankruptcy or insolvency; and if the employer has always paid all the contributions asked for, then the trustees would explicitly be permitted not to collect the debt.

The total debt for the employers which I have seen suffering particularly from this is £7.2 million. That may sound a lot of money, but this scheme is worth well over £2 billion, so whether it collects that extra few million pounds will not make a difference to its solvency and survival in the long term. We seem to have lost sight of reasonableness. I hope we might define the circumstances tightly so that other employers cannot use this provision as a precedent. I completely understand concerns that we do not want it to be used as a precedent. The size of the debt is immaterial, relative to the solvency of the scheme.

I have deliberately worded Amendment 94 so that it follows new Section 58B(2) on page 91 of the Bill. Under that provision, the Section 75 debt or contribution notice will not have to be imposed. It says:

"A person commits an offence only if (a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received".

Clearly, in the case I described, in multi-employer schemes that test would not be met for imposition of the debt. The new section continues:

"(b) the person knew or ought to have known that the act or course of conduct would have that effect".

These employers have paid everything that they were ever asked for and were always told that the scheme was fully funded, so they would never have known that there was a problem. The trustees of the scheme did not even try to collect Section 75 debt between 2005 and the past couple of years. The new section then says:

"(c) the person did not have a reasonable excuse for doing the act or engaging in the course of conduct".

Again, if someone is paying everything that is due, the size of the debt is not material to the solvency of the scheme and the scheme is not buying annuities anyway, can we not inject some reasonableness? There are already easements but they do not meet these circumstances.

6.15 pm

The trustees of the scheme seem to be afraid that they cannot help out these employers without a change in the legislation, which is what Amendment 94 seeks to deliver. It is a probing amendment and I would be grateful if the Minister and the department would further consider whether there are any ways in which this might be achieved. Some people have terminal cancer and less than a year to live; they face personal bankruptcy and destitution as a result of a debt that a large, recalcitrant employer would not be forced to pay as a result of the measures in this Bill. I beg to move.

Baroness Bowles of Berkhamsted: My Lords, I have added my name to this amendment because the circumstances that have been outlined are distressing and there seems to be no easy way for the affected people to address them. If they were bigger and more powerful, it is certain that they would not be pursued—not least because the instructions for pursuit, if I can call them that, are that you have to be able to recover more than it costs you to do so. It would not take a great deal of litigation for that to be backed off from.

It is another example of how unfair it is when people who have run a business as a partnership, unincorporated, are at a disadvantage compared with those who take advantage of limited liability. You are not doing anything bad by putting yourself and your livelihood on the line. It may be that it has not been done in the way that it should have been in small practices, such as plumbing companies, but when you find yourself in this kind of situation—which you would not be in if you had been incorporated—it has always been difficult to see fairness in the law.

The noble Baroness, Lady Altmann, has produced a tightly composed amendment. I have studied it and it seems to fit the bill. Obviously, if someone can improve on it that would be fine. Otherwise, I do not see how there will be fairness for those who do not have equality of arms with the larger companies, which have sometimes been allowed to leave schemes without necessarily paying up as much as they should. In such cases, the burden falls on smaller firms. The trustees should have taken that into account long ago. If they have not, why should the burden fall on those who cannot find the means to take the matter to court? Basically, that is what this is about. A large employer in the scheme would fight the case and perhaps there would be claims for negligent behaviour for some of what has gone on. This solution avoids quite a lot of unpleasantness and untidiness that might otherwise be the only way. If there is any way that the Government can pursue this amendment, it would be a very good thing.

Baroness Stedman-Scott: I thank my noble friend Lady Altmann for tabling this amendment and congratulate her on her tenacity in continuing her campaign to resolve this situation. If we were giving awards for tenacity, she would win, I am sure.

The Government understand the difficulties facing employers in these situations, especially where, in the past, they have taken all reasonable steps to fund the scheme as requested by the trustees. The amendment seeks to amend Section 75 of the Pensions Act 1995 to allow trustees further discretion to cancel a departing employer's debt in certain circumstances. It raises a number of issues that I will address.

The effect of this amendment would be that every time it is applied, the employer covenant would be weakened, increasing the risk of thousands of members not getting their benefits in full. It is hard to envisage a scenario where trustees could agree to such an arrangement and still be compliant with their fiduciary duty to act in the best interests of scheme members. In particular, the proposals for a new de minimis threshold raise significant issues. Even if the threshold is set at a very low level, it could enable a large number of small employers to depart schemes without payment. The aggregate impact of this could be significant. Passing this level of debt on to employers who remain could make them insolvent.

It is worth noting that some flexibility already exists for trustees to collect reduced employer debts as long as the scheme is funded above a Pension Protection Fund level basis. It is set at this level to ensure that schemes do not place an additional burden on the Pension Protection Fund and, ultimately, the levy payers.

The amendment also proposes that debts could be compromised if the majority of the debt relates to orphan members whose employers no longer remain in the scheme. This would be very difficult for the scheme trustees, who have a duty to ensure that orphaned members' rights are protected and that their scheme is properly funded. Removing orphan debts from the employer debt calculation would ultimately worsen the scheme's funding position, putting thousands of members' pensions at risk.

Further, this amendment would impose different statutory requirements on unincorporated and small employers, creating a number of challenges. For example, if all or the majority of the scheme's employers were either unincorporated or small, it could mean that none, or very few, employer debts would ever be collected; in the long term, that could create a severe underfunding situation, with all the risks that entails.

The Government's Green Paper and subsequent White Paper, which was published in March 2018, on defined benefit pension schemes looked very closely at this issue and considered carefully what could be done to relieve the pressure that some employers face from their obligation to pay an employer debt. The White Paper concluded that the existing arrangements in legislation, along with the deferred debt arrangement introduced in April 2018, provide enough flexibility for employers to manage their employer debts. Further, the current full buyout calculation method is the most secure and effective way of protecting members and remaining employers in a multi-employer scheme.

While the Government recognise the difficulty facing companies in managing this debt, they cannot, at this time, offer any easements beyond those already provided for in legislation. However, recognising the many representations that the Government have received supporting a change that would assist employers in this difficult position, we will keep this under review and continue the dialogue.

My noble friend Lady Altmann raised the issue of retired employers triggering a debt and being unable to pass it on. Flexibility in the rules enables retired employers to pass their scheme on to another employer without triggering an employer debt. The scheme has a streamlined, flexible apportionment arrangement, which could help employers in this situation.

My noble friend also made the point that some people find themselves in extreme difficulties, with the potential to lose their home. The employer debt regime is designed to protect employers who remain in a multi-employer scheme. It would be unfair to burden remaining employers with additional unplanned costs to cover the shortfall that would be created by relaxing

requirements for one group of employers. The flexible apportionment arrangement currently available in legislation can be used to help unincorporated employers who wish to incorporate.

My noble friend Lady Altmann also asked whether the scheme is fully funded. My noble friend the Minister mentioned that the scheme is fully funded on a technical provision basis. However, I understand that the scheme is underfunded on both a budget basis and a PPF basis. The next scheme valuation is due in April 2020, which will give us a clearer picture of the scheme's funding position.

I thank my noble friend and other noble Lords for their contributions to the debate on this amendment. I know how important it is to my noble friend, but, on the basis of my response, I respectfully ask her to withdraw the amendment.

Baroness Altmann: I thank my noble friend for her response, but I confess to being extremely disappointed with the robust refusal to address the issue. The current easements are not working, otherwise I would not be trying to press this amendment. The deferred debt arrangement does not remove the debt; it just pushes it into the future, so the person will still be made destitute at some point. Trustees are refusing a flexible apportionment arrangement, so clearly that is not an option.

We seem to have lost sight of the materiality issue and of what we are trying to do with the bigger employers. There are already some ways in which trustees can not collect Section 75 debt. I am just trying to extend those very slightly; it will not apply to the majority of employers in the scheme and it will not materially impact on the solvency and survival of the scheme.

I beg leave to withdraw the amendment, but I urge my noble friend to go back to the department to see whether there are any ways in which we might be able to inject some further easement for multi-employer, non-associated schemes, which were never designed to do this to good employers.

Amendment 94 withdrawn.

Amendments 95 to 97 not moved.

Schedule 11: Further provision relating to pension schemes

Amendment 98

Moved by ***Baroness Stedman-Scott***

98: Schedule 11, page 186, line 16, at end insert—

"11A_(1) The Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) is amended as follows.

(2) After Article 41 insert—

"41A Climate change risk

(1) Regulations may impose requirements on the trustees or managers of an occupational pension scheme of a prescribed description with a view to securing that there is effective governance of the scheme with respect to the effects of climate change.

(2) The effects of climate change in relation to which provision may be made under paragraph (1) include, in particular—

(a) risks arising from steps taken because of climate change (whether by governments or otherwise), and

(b) opportunities relating to climate change.

(3) The requirements which may be imposed by the regulations include, in particular, requirements about—

(a) reviewing the exposure of the scheme to risks of a prescribed description;

(b) assessing the assets of the scheme in a prescribed manner;

(c) determining, reviewing and (if necessary) revising a strategy for managing the scheme's exposure to risks of a prescribed description;

(d) determining, reviewing and (if necessary) revising targets relating to the scheme's exposure to risks of a prescribed description;

(e) measuring performance against such targets;

(f) preparing documents containing information of a prescribed description.

(4) Regulations under paragraph (3)(b) may, in particular, require assets to be assessed by reference to their exposure to risks of a prescribed description and may, for the purposes of such an assessment, require the contribution of such assets to climate change to be determined.

(5) In complying with requirements imposed by the regulations, a trustee or manager must have regard to guidance prepared from time to time by the Department.

41B Climate change risk: publication of information

(1) Regulations may require the trustees or managers of an occupational pension scheme of a prescribed description to publish information of a prescribed description relating to the effects of climate change on the scheme.

(2) Regulations under paragraph (1) may, among other things—

(a) require the trustees or managers to publish a document of a prescribed description;

(b) require information or a document to be made available free of charge;

(c) require information or a document to be provided in a form that is or by means that are prescribed or of a prescribed description.

(3) In complying with requirements imposed by the regulations, a trustee or manager must have regard to guidance prepared from time to time by the Department.

41C Articles 41A and 41B: compliance

(1) Regulations may make provision with a view to ensuring compliance with a provision of regulations under Article 41A or 41B.

(2) The regulations may in particular—

(a) provide for the Authority to issue a notice (a "compliance notice") to a person with a view to ensuring the person's compliance with a provision of regulations under Article 41A or 41B;

(b) provide for the Authority to issue a notice (a "third party compliance notice") to a person with a view to ensuring another person's compliance with a provision of regulations under Article 41A or 41B;

(c) provide for the Authority to issue a notice (a "penalty notice") imposing a penalty on a person where the Authority are of the opinion that the person—

(i) has failed to comply with a compliance notice or third party compliance notice, or

(ii) has contravened a provision of regulations under Article 41A or 41B;

(d) provide for the making of a reference to the First-tier Tribunal or Upper Tribunal in respect of the issue of a penalty notice or the amount of a penalty;

(e) confer other functions on the Authority.

(3) The regulations may make provision for determining the amount, or the maximum amount, of a penalty in respect of a failure or contravention.

(4) But the amount of a penalty imposed under the regulations in respect of a failure or contravention must not exceed—

(a) £5,000, in the case of an individual, and

(b) £50,000, in any other case.

(5) In this Article "First-tier Tribunal" and "Upper Tribunal" mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007."

(3) In Article 113 (breach of regulations), in paragraph (3)(b), after "10" insert "or under provision contained in regulations made by virtue of Article 41C".

(4) In Article 167 (Assembly, etc. control of orders and regulations), after paragraph (3) insert—

"(3A) Paragraph (2) also applies in relation to the first regulations made by virtue of Article 41A or 41C (whether made alone or with other regulations).""

Member's explanatory statement

This amendment makes provision for Northern Ireland that is equivalent to the provision made by the Minister's amendment to insert a new Clause after Clause 123.

Amendment 98 agreed.

Amendment 99

Moved by ***Baroness Stedman-Scott***

99: Schedule 11, page 186, line 22, after "(d)" insert ", (2A)(a), (b) or (d)"

Member's explanatory statement

This amendment makes provision for Northern Ireland that is equivalent to the provision made by the Minister's amendment at page 118, line 11.

Amendment 99 agreed.

Schedule 11, as amended, agreed.

Amendment 100

Tabled by ***Baroness Neville-Rolfe***

100: Before Clause 129, insert the following new Clause—

"Impact assessment

Within six months of the passing of this Act the Secretary of State must lay an impact assessment before each House of Parliament setting out the expected costs of its provisions for businesses, and governmental and non-profit organisations."

Baroness Neville-Rolfe: My Lords, my noble friend Lord Howe took great trouble in Grand Committee on 2 March—at column GC237 in *Hansard*—to respond to my earlier amendment on impact assessment. He made an admirable commitment to transparency, both on costs and benefits, on the range of measures in the Bill. Time is passing and I see no need to delay the Committee further. If it is in order, I will not move the amendment.

Amendment 100 not moved.

6.30 pm

Amendment 101

Moved by ***Baroness Bowles of Berkhamsted***

101: Before Clause 129, insert the following new Clause—

"Regulations

Regulations under this Act may not—

(a) create a new criminal offence,

(b) create a regulator,

(c) create multi-employer collective money purchase schemes,

(d) significantly restrict the powers of trustees, or

(e) amend primary legislation."

Baroness Bowles of Berkhamsted: My Lords, in Committee there has been broad resistance by the Government to positive amendments suggesting what could be put in the Bill to give reassurance about many of the issues raised. The Government claim that that needs to be the case to preserve flexibility, but that does not get over the fact that there are very broad delegated powers in the Bill, as pointed out by my noble friend Lord Sharkey on the first day in Committee and by the Delegated Powers Committee. There is no certainty about how far those broad powers will be used. They are not called Henry VIII clauses for nothing, although delegated powers nowadays put Henry VIII in the shade. I believe the noble and learned Lord, Lord Judge, elaborated on that last year.

This amendment goes the other way. Instead of making suggestions to clarify what needs to be done, it clarifies five things that the Government may not do under the delegated powers. It is, of course, a probing amendment. I could have made a longer or different list, and a couple of matters are in it specifically to enable further discussion. However, despite the probing nature of the amendment, its form is not novel. It has appeared in other legislation, and I believe it appears several times in the withdrawal Act. It is a known way of addressing issues of concern in skeleton legislation. I may have helped it into a few pieces of legislation, but I consider that such a clause should always exist.

I shall take each of my points in turn. Proposed paragraph (a) states:

"Regulations under this Act may not … create a new criminal offence".

That provision has been used before to constrain broad powers in legislation. A new criminal offence should always come to Parliament in such a way that it can be amended or rejected. I believe there are examples of finding a new criminal offence within a set of regulations with no amendment possibilities; indeed, I have been on one of the Secondary Legislation Scrutiny Committees, and there were examples. That should not happen. It would be a disproportionate use of delegated power—that has been suggested when I have run such a proposed clause—yet it has been used and therefore it is reasonable to suggest that it should not be. In the instance of pensions, and despite the fact that I have argued on this Bill that the criminal offences are not drawn wide enough, so I am certainly not a dud with regard to them, I do not believe that it would be reasonable to make new ones by regulation. The relevant clauses in the Bill are easily wide enough to do that.

Proposed paragraph (b) is about not creating a regulator. There appears to be a strong danger of that here because the wording that enables powers to be conferred on any person could enable the creation of a regulator. I think the wording is "discretion", but my noble friend Lord Sharkey inquired as to what it meant and the reply came back that it could be any powers to any body, therefore it would enable the creation of a regulator. There is an example of that in Clause 51. If the person who is designated is already a regulator which has been set up under primary legislation, it is not a problem to expand its powers appropriately, but if a new regulator is created, that would be wrong. So why are there clauses in the Bill that are wide enough and of a description that would enable that? My wording here does not capture all the wrongs that could happen under any power to any person provisions, but at least it draws a line.

Proposed new paragraph (c) prohibits the creation of a multi-employer collective money purchase scheme through regulations. I refer back to issues that have already been discussed with regard to problems in the plumber pension scheme. There are other examples of difficulties caused by withdrawals from collective DB schemes. It can come around in particular when large and small employers are put together. Our discussions with regard to collective money purchase schemes have already made it clear that there are issues on which we are still uncomfortable in the context of the employee risk, even in a single CDC scheme. The Post Office scheme is not an everyday case; they will start out with some advantages. There will be even more unknowns in the multi-employer scheme. For example, the pool for risk-sharing is larger, which might seem attractive, but the risk of a larger group leaving is then an awfully large matter for the remaining pensioners to take on board.

Proposed new paragraph (d) is not to

"significantly restrict the powers of trustees".

I do not mean to override the powers the regulator has to sanction trustees for improper behaviour. I put this point in because there has already been discussion as to whether some of this Bill's provisions are encroaching on the day-to-day decision-making of trustees—for example, with regard to investment policies. There are noble Lords here who have far more experience of pension trustees than I do, and I particularly value thoughts on the usefulness of this provision. I want to be clear: I am not suggesting that this is anything to do with preventing regulators having the right balance of powers to do things. It is where they would intervene on day-to-day matters.

Proposed new paragraph (e) prevents amendment of primary legislation. I am aware that this is in conflict with the powers the Government have given themselves in Clause 47(5). It is a matter of principle. Pensions are a highly sensitive policy area, and it would be wrong if a Government could selectively change or revoke significant consumer protection provisions without scrutiny at the level of primary legislation. The clause says:

"Regulations under this section may among other things … amend, repeal or revoke a provision of this Part or any other enactment."

A short while ago, when we were discussing one of the amendments from the noble Baroness, Lady Altmann, I think I heard that the Minister did not think there was the power to do certain things. Actually, the Government jolly well have it here, because they can "amend, repeal or revoke" anything they like—any enactment—so I think that was not a valid excuse, if I can put it that way.

Of course, the real problem here is that parliamentary procedures are deficient in that departments have to enter into a bidding process to get Bills and, because of time constraints, they do not come around superabundantly. The only other option, regulations, is not really democratic on the level on which they have become used. It is possible for the Government to do something about that, but it is my view that, until it is done, restraints must be placed on powers in the manner I propose—all the more so when there is lack of policy guidance.

I know we have had exchanges before on whether there is adequate policy guidance. Some of us think there is not, and the noble Earl has said it is all about implementation and the policy is there. I cited Clause 47(5), and Clause 51(3) says:

"Regulations under this Part may … confer a discretion on a person".

When that was discussed—when the noble Lord, Lord Sharkey, raised the clause stand part debate on Clause 51—my immediate scribble was "may not create a regulator", which was directly in response to what could be covered under "discretion". That, therefore, is the reasoning. I could give more reasons and find many more examples of where discretion is conferred: a failure to really tie it down to the policies. Given that where helpful suggestions have been put forward that would perhaps have given more reassurance on the true nature and scope have been resisted, there is no alternative but to outline what may not be done. I beg to move.

Baroness Altmann: My Lords, I add my support to many aspects of the amendment from the noble Baroness, Lady Bowles. She is trying to do something very helpful for the Committee and the Bill. We have all expressed concerns about the wide-ranging powers in this Bill, which seem to go a lot further than normal for such Bills. I recognise that pensions Bills tend to have wide powers added to them, but it makes sense to identify areas where we would not wish the legislation to allow a Minister to do things that would normally come back to Parliament for our scrutiny or further legislation.

Baroness Sherlock: My Lords, I, too, share the aspiration of the noble Baroness, Lady Bowles, to constrain somewhat the use of the extensive powers that the Government are blessing themselves through this Bill. I will not, however, reopen that debate in any great detail, although there is a temptation to say "We have another whole hour of Committee, we can debate this at great length". The danger of a list is that some noble Lords will have concerns about particular aspects, such as constraining trustee power, while some will be in favour of multi-employer collective money purchase schemes. Most of us, however, would have reservations about the ability to amend primary legislation.

[Baroness Sherlock]

Although it may not feel as though Bills come along in super abundance, in the field of pensions it feels like they come along all the time like the number 19 bus, but I take the point. In fact, if we are going to have a list I would like to add to it: I would start with not allowing dashboards to do transactions without covering that in primary legislation. I have a long list in my notes which I will develop at length should we return to this. What might be helpful is if the Minister, in replying, would tell Committee whether the Government intend to do any of these things.

Baroness Stedman-Scott: My Lords, the question of delegated powers has already been extensively discussed in relation to the relevant clauses. My noble friend Lord Howe has already eloquently covered the Government's position on these powers. As I said before to this Committee, the use of secondary legislation to set out more detailed technical matters, or to amend primary legislation for specified purposes, is consistent with the general approach in pensions legislation.

As with other pensions legislation, the provisions in the Bill embody the fundamental policy, while provisions of a more technical nature, or which are by their nature liable to change, are delegated to secondary legislation. This staged approach has two benefits. First, it enables flexibility to ensure that the legal framework remains appropriately tailored to developments in the pensions industry. Secondly, it enables government to provide legal certainty more quickly. This is important for the pensions industry and for member protection. It is a common feature of pensions legislation, which is by its nature very technical and can be subject to change.

6.45 pm

I turn now to some of the areas singled out by the noble Baroness, Lady Bowles, in her amendment. One was the rationale for a delegated power to introduce new criminal sanctions. There is no delegated power in the Bill to create a new criminal offence through regulations. However, the noble Baroness might have in mind in tabling this amendment the delegated powers in Clause 107. These allow regulations to prescribe schemes or types of DB pension schemes to which the offence of failing to comply with a contribution notice or employer debt liability will not apply. These powers are necessary to fine tune how the offence will apply in order to target the types of schemes most at risk. It will also allow the Government to respond to any changing and emerging risks to pension schemes.

On the rationale for delegated power to restrict the powers of trustees, the amendment would also prevent us using regulations to place significant restrictions on trustee activities. There are some areas where we think the powers could be seen to enable regulations to restrict the powers of trustees to some extent. For example, there is a delegated power in Clause 18 to prescribe and then, if necessary, amend the framework which trustees of a CDC scheme must follow when setting the rules for the calculation and adjustment of CDC benefit values.

We do not wish to interfere with trustees' activities unless necessary. For example, as I said in Committee last week in relation to Clause 18, we would not want to interfere with authorised CDC schemes that meet all the Pensions Regulator's supervisory criteria. Pension scheme trustees are directly responsible for millions of ordinary people's retirement incomes. For CDC schemes, in particular, trustee decisions might directly affect the amount of pension income a person gets to live on each month. It is therefore right, and indeed necessary, that the Government have the powers in some circumstances to place regulatory restrictions on trustee discretion.

There are regulation-making powers in the Bill which could potentially restrict the power of pension schemes' trustees on investments. These powers are taken because there could be situations where members' benefits might be at risk. It is important that the Government can, where necessary, use regulations to place requirements on trustees in order to safeguard members. We are mindful that we do not wish to interfere unnecessarily but our view is that taking a power to act swiftly where required is appropriate and proportionate.

The noble Baroness, Lady Bowles, raised a point about the rationale for delegated power to amend the legislation in order to create multi-employer collective money purchase schemes. The amendment would also prevent us using regulations to amend this Bill to provide for CDC master trusts and other kinds of non-connected multi-employer CDC schemes.

As I said previously in this Committee, many people, including those from the insurance industry, trade unions, pension providers and pensions commentators, have called for CDC provision to be extended to master trusts, decumulation-only vehicles and other models of non-connected multi-employer schemes. Part 1 was drafted with the intention of using regulations to open it up to other kinds of CDC schemes in the future. Primary legislation sets the framework and principles all CDC schemes must follow, and regulations will then be used to ensure the legislation works appropriately for different kinds of schemes.

The proposed amendment to these powers would delay the rollout of these other scheme types, as it would require us to bring forward new primary legislation to achieve it. This would mean that many employees and businesses would not get the benefit of CDC pensions as early as would otherwise be possible. As I said last week, the power in Clause 47 to disapply the prohibition on master trusts and other types of non-connected multi-employer schemes to provide CDC benefits via regulations is subject to the affirmative procedure to enable debate. We intend that any such regulations will also be the subject of further consultation.

As the Committee is aware, there are a number of Henry VIII powers in this Bill. These powers to amend legislation through regulations will ensure that the legislation can be adapted to cover future developments in the pensions industry, while keeping members well protected. I am aware of the views expressed by the Committee about the use of any Henry VIII powers. I have listened to those concerns today and when they have been expressed to me previously. However, I am also clear that they appear in this Bill only for wholly appropriate reasons. These powers are included to ensure that the legislation can operate effectively and, where necessary, respond to developments in industry.

I want to be clear to noble Lords that there is no need to rule out the creation of a regulator through regulations, as there are no powers in this Bill to create a regulator.

I should have included this point in my response to questions about the Henry VIII powers, so forgive me for not doing so. As CDCs are a new type of benefit, we want to ensure that they work as intended. Royal Mail is currently the only employer that has committed to establish a CDC scheme, and we want to take the time to learn before opening up CDC provisions more widely. We are aware that various industry bodies have expressed an interest in other models of CDC benefit provision. This power would enable the Government to react to industry developments, so that CDC provisions can be extended to other models, such as non-connected multi-employer or commercial providers, but only to the extent appropriate, as the noble Baroness pointed out.

The noble Baroness, Lady Bowles, raised a point about not using delegated powers to create a new regulator. I have already covered that.

As for delegated powers to amend the legislation in order to create multi-employer collective money purchase schemes, and the fact that these provisions are not in the Bill, we need to consult with actuaries, pension lawyers, pension providers, employers and any other interested parties before we finalise our provisions in this area. The design of CDC master trusts and other non-connected multi-employer CDC schemes might need to have slightly different authorisation requirements or continuity strategies, and we need to engage with the industry on this.

With the further assurances I have provided, I respectfully request that the noble Baroness withdraw her amendment.

Baroness Bowles of Berkhamsted: I thank the Minister for her responses. Referring to the question put by the noble Baroness, Lady Sherlock, as to which of these the Government may be doing, I think the answer has come back: all of them. I will go through them.

With proposed new paragraph (a), to

"create a new criminal offence",

I was not focusing on fine-tuning Clause 107. We are used to how fine-tuning of an existing offence is done. If you look at some other areas, such as sanctions and anti-money laundering, you will see that it is a new criminal offence every time a new sanction is created, but the framework for what has to be done to create such a sanction is laid out in the Bill. If the right kind of policy direction is given in the Bill, you can be allowed to do more. I beg to differ with the assumption that there are no powers here, when the Government can amend any enactment. It puts no restriction on what they may do, so I do not think there is any legal certainty around not creating something that is a completely new idea of a criminal offence.

I am pleased to hear that there is no power here to enable the creation of a regulator. I would be interested to look again at the *Hansard* from the first day of Committee, because under the requirement to

"confer a discretion on a person",

the person can be a body corporate and the discretion was specifically referenced as "powers", if I remember rightly. I would be happy to accept a Pepper v Hart statement that there is to be no creation of regulators, if the Minister felt able to make one.

It has been made clear that there is the intent to create multi-employer collective money purchase schemes. This worries me greatly: having looked at it further, I am now less than certain about the general benefits and there is a risk to pensioners and employees. So many of the points put forward over the four days of Committee debates show that we have not got sufficient guidance as to what that shape will be. It worries me quite a lot that although we cannot yet work out how to do it fully for one, we are going with the more risky multi-employer system.

The requirement to

"significantly restrict the powers of trustees"

is, I suppose, a trick point. If anything does not deserve to be in the list, it is that, but I have drawn out a debate around the point, as I hoped to. Perhaps we have to be able to do that, but maybe there is some other way to make sure that it is framed with care.

My amendment then comes back to the amending of primary legislation. This is a wide power and I know that it can be used usefully, but such wide powers are never based on a single regulation. An individual regulation that could amend or revoke primary legislation would mean that Parliament could then reject it without being accused of always throwing the baby out with the bath water and losing all the other good things in the regulations. That might be a more reasonable way to approach things, but we know that that is not how it happens: we find ourselves doing something that we do not like because it is a small element of a much bigger thing. It is always done when the Government can make the case that it is urgent and that it will be a total disaster if it is booted out.

Baroness Sherlock: I am grateful to the noble Baroness for giving way, especially as I am about to abuse her generosity by asking a more general question. It is directed across the table, and is something that I forgot to ask in my own contribution.

The noble Baroness asked for assurance on various points. At various times during the Committee, the Minister has kindly agreed to write to noble Lords. Can the Minister confirm that those letters will come before Report?

Baroness Stedman-Scott: I can absolutely ensure that those letters will be with all Committee members before Report. We have debated these issues and I have listened to the concerns raised by noble Lords. We believe that all the powers are suitable and appropriate.

Baroness Bowles of Berkhamsted: I am not convinced, but we will await those letters—that was a very useful intervention. This is a matter that, one way or another, we may have to return to in some guise on Report. For now, I beg leave to withdraw my amendment.

Amendment 101 withdrawn.

Clauses 129 to 131 agreed.

Bill reported with amendments.

Committee adjourned at 6.59 pm.