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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

Retirement of a Member: Lord Carter of Barnes
Announcement 1
Questions
Apple: Advanced Data Protection Service 1
Audit, Reporting and Governance Authority....5
UK Fishers: EU Agreement....8
Employment Rights Bill: Productivity....11
Business of the House
Motion on Standing Orders....15
Disclosure (Scotland) Act 2020 (Consequential Provisions and Modifications) Order 2025
Motion to Approve 15
Electronic Communications (Networks and Services) (Designated Vendor Directions) (Penalties) Order 2025
Motion to Approve 15
Town and Country Planning (Fees and Consequential Amendments) Regulations 2025
Motion to Approve 15
Scunthorpe Steelworks
Commons Urgent Question 16
PIP Changes: Impact on Carer's Allowance
Commons Urgent Question 19
National Insurance Contributions (Secondary Class 1 Contributions) Bill
Commons Reasons 24
Mental Health Bill [HL]
Report (1st Day) 27
Chancel Repair (Church Commissioners' Liability) Measure
Motion to Direct 92
Church Funds Investment Measure
Motion to Direct 95
Mental Health Bill [HL]
Report (1st Day) (Continued) 97

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The abbreviation [V] after a Member's name indicates that they contributed by video call.

The following abbreviations are used to show a Member's party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

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CAPTAIN OF THE HONOURABLE CORPS OF GENTLEMEN-AT-ARMS AND CHIEF WHIP—The Rt Hon. Lord Kennedy of Southwark
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Lord Collins of Highbury §
Lord Ponsonby of Shulbrede §
Lord Leong, CBE
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Baroness Taylor of Stevenage §
Baroness Jones of Whitchurch §
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Baroness Twycross §
Baroness Blake of Leeds

§ Members of the Government listed under more than one department

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THE
PARLIAMENTARY DEBATES
(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-NINTH PARLIAMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
COMMENCING ON THE NINTEENTH DAY OF JULY IN THE
SECOND YEAR OF THE REIGN OF

HIS MAJESTY KING CHARLES III

FIFTH SERIES **VOLUME DCCCXLV**

SEVENTH VOLUME OF SESSION 2024-25

House of Lords

Monday 31 March 2025

2.30 pm

Prayers—read by the Lord Bishop of Southwark.

Retirement of a Member: Lord Carter of Barnes

Announcement

2.36 pm

The Lord Speaker (Lord McFall of Alcluith): My Lords, I should like to notify the House of the retirement, with effect from 28 March, of the noble Lord, Lord Carter of Barnes, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I should like to thank the noble Lord for his much-valued service to the House.

Apple: Advanced Data Protection Service

Question

2.36 pm

Asked by ***Lord Strasburger***

To ask His Majesty's Government what assessment they have made of the impact on the privacy of Apple customers of the company's decision to withdraw their advanced data protection service in the United Kingdom.

Lord Strasburger (LD): I beg leave to ask the Question standing in my name on the Order Paper and I draw the House's attention to the fact that I am chair of Big Brother Watch.

The Minister of State, Home Office (Lord Hanson of Flint) (Lab): This Government take privacy very seriously. We have a long-standing position of protecting privacy while ensuring that action can be taken against child sexual abusers and terrorists. I cannot comment on operational matters today, including neither confirming nor denying the existence of any notices. This has been the long-standing position of successive UK Governments for reasons of national security.

Lord Strasburger (LD): Once again, the Home Office has demonstrated its disdain for the privacy and digital security of British citizens and companies. Strong encryption is essential to protect our data and our commerce from attack by organised crime and rogue states. Any weakness inserted into encryption for the benefit of the authorities is also available to those who would do us harm—yet that is precisely what the Government are demanding from Apple. Can the Minister please explain why the Home Office wants to make Apple's British customers the most at risk in the world of being hacked?

Lord Hanson of Flint (Lab): I know the noble Lord has long had an interest in these matters, because we served together some nine or 10 years ago on the Investigatory Powers Act. But he has to understand that, today, I cannot comment on operational matters relating to any issue, including neither confirming nor denying the existence of any notices. That is standard government procedure, and I cannot comment upon it. I know that I will, I am afraid, disappoint the noble Lord, but that is the answer I have to give him.

Lord Moylan (Con): The fact that Apple has withdrawn this level of encryption from the UK is in the public domain, even if the noble Lord does not wish to comment on whether a notice has been issued. Can he comment on the fact that, for whatever reason, Apple has withdrawn that level of encryption from the UK? It is reported in the United States newspapers that it is because of a technical capability notice issued by the United Kingdom Government. Has this come up, in any sense, in discussions His Majesty's Government have had with the United States Government in relation to both trade arrangements that might exist between us in the immediate future and our ambition to be an AI superpower in the near future?

Lord Hanson of Flint (Lab): The noble Lord raises issues that I know he has an interest in. Decisions made by Apple are a matter for Apple, and the removal of any features is a matter for Apple. Again, for reasons of national security I cannot confirm or deny any conversations that we have had or any issues that are undertaken.

Lord Harris of Haringey (Lab): My Lords, I understand that my noble friend cannot comment, obviously, on any notice issued to Apple in this regard, but what he could, I am sure, comment on is the nature of the assessment made by His Majesty's Government of whether or not such a notice might be issued. Can he confirm that the consideration will include a trade-off between the general weakening of security and the position of confidentiality, against the gains that will be obtained by the security services in any opportunity to de-encrypt materials? In so doing, can he comment on whether or not such an assessment also looks at what other capabilities the security services may have in respect of individuals on whom they wish to obtain information?

Lord Hanson of Flint (Lab): My noble friend makes interesting points. The Government take privacy very seriously and have a strong reputation internationally for protecting human rights. Access to data can happen only under specific circumstances and with strict safeguards, and it is taken, when it can be taken, against child sexual abusers or terrorists. I come back to the point that I cannot comment on the operational issues relating to points made in this House today, including neither confirming nor denying the existence of any notices, and that is the position that I will have to advise the House of during the course of this Question.

Baroness Fox of Buckley (Non-Afl): I understand the Government's concern with their own privacy and secrecy, less so that of family group chats and journalists' WhatsApp messages. To avoid that, does the Minister acknowledge that it is not possible for Apple to open doors to all its customers' data and ensure that only the police and intelligence services walk through, when it is obvious that criminals, foreign adversaries and others would exploit that weakness? Also, at a time when the Government are seeking to establish the UK as a leading hub for innovation and technology, does the Minister agree that it would be baffling if the Home Office were to squander that advantage by trying to bully tech companies into undermining their users' privacy, security, civil liberties and free speech?

Lord Hanson of Flint (Lab): The Investigatory Powers Act, on which I served during its legislative passage with the noble Lord, Lord Strasburger, contains robust safeguards. It contains independent oversight to protect privacy and ensure that data is obtained only on an exceptional basis and only when necessary and proportionate to do so. That is the only answer I can give the noble Baroness today. I cannot comment on the operational issues or on the case she has mentioned in relation to Apple. I cannot confirm or deny any notices, and I have to stick to that position today for the House and for national security issues.

Lord Davies of Gower (Con): I acknowledge that the Home Office has already said, as has been endorsed today by the Minister, that it does not comment on operational matters, but it has been widely reported that this decision by Apple was taken in response to a government demand to view users' encrypted data both in the UK and abroad. Of course it is right that the Government act to keep people safe, but they must do so while respecting people's privacy. Can the Minister comment on how the Government intend to engage with Apple and other tech companies going forward to make sure that future discussions on security do not result in another unproductive breakdown of relations?

Lord Hanson of Flint (Lab): The Government take privacy extremely seriously. We have a strong international reputation for privacy, and we continue to work with companies to ensure that privacy is respected, but I cannot comment on the issue the noble Lord has mentioned concerning any ongoing issues or operational matters. I cannot confirm or deny any notices, and I will, I am afraid, have to repeat that again for the House today.

Lord Carlile of Berriew (CB): On a non-operational matter, can the Minister confirm that all decisions of the kind that have been mentioned will routinely be referred to the Investigatory Powers Tribunal so that it can decide whether government decisions were proportionate or disproportionate?

Lord Hanson of Flint (Lab): All proceedings will be referred to the Investigatory Powers Tribunal, and the decision whether to hold the discussion in public or private is for the tribunal. Those matters will be examined and any judgments on any issue at any time will be made by the tribunal. I hope that is a non-controversial matter for the noble Lord.

Lord West of Spithead (Lab): Does my noble friend the Minister agree that while encryption gives great security, if you add a journalist to the distribution list you lose that security?

Lord Hanson of Flint (Lab): I can only say that to my knowledge, that is a matter for another nation and not this one, and not this Home Office.

Lord Clement-Jones (LD): My Lords, further on a non-operational matter, are the Government always clear that their actions conform to the judgment of Podchasov v Russia by the European Court of Human Rights last February? It held that weakening end-to-end encryption or creating back doors could not be justified. Therefore, the Government could be in breach of Article 8 of the European Convention on Human Rights, which guarantees the right to privacy. Are the Government happy to be in the same boat as Russia as regards individual rights and encryption?

Lord Hanson of Flint (Lab): The noble Lord will know that Russia and this UK Government are so far apart that there is no correlation between the two under any circumstances. In fact, we will also once again publicly condemn the illegal invasion of Ukraine by Russia. That is how far apart we are on these matters.

Access to data happens only under specific circumstances and with strict safeguards, so that robust action can be taken against child sex abusers and terrorists. That is the position of the Government. If any data is accessed, it is accessed by the Investigatory Powers Act for the tribunal, and under strict regulation, for the purposes of stopping bad people doing bad things.

Audit, Reporting and Governance Authority

Question

2.47 pm

Asked by ***Baroness Bowles of Berkhamsted***

To ask His Majesty's Government whether the legislation establishing the Audit, Reporting and Governance Authority will account for the principle of separation of powers regarding its standards-setting and enforcement functions by having independent committees for each area.

Lord in Waiting/Government Whip (Lord Leong) (Lab): My Lords, as announced in the King's Speech, the Government intend to publish the draft audit reform and corporate governance Bill in due course. The Government's aim is to modernise the Financial Reporting Council's framework for standard-setting and to uphold the principle of the separation of powers in the establishment of the audit, reporting and governance authority. It would not be appropriate to anticipate the contents of the Bill in advance of its publication. However, the Government agree with the noble Baroness, Lady Bowles, that transparency and due process should be at the forefront of standard-setting processes.

Baroness Bowles of Berkhamsted (LD): I thank the Minister—I think that his answer was yes. The Takeover Panel had to separate itself as a result of the Human Rights Act 1998, and it is long overdue in the field of audit and accounting. Will it be clear in the legislation that the enforcement side should not rely on the same historic legal advice as the standards side on a "true and fair" view? The FRC has relied on controversial legacy legal opinions on a "true and fair" view that were obtained when the big four had significant sway over the FRC and elsewhere. We need to know that ARGA should mean the end of systemic vested interests, including benign vested interests and groupthink, and marking its own homework.

Lord Leong (Lab): My Lords, the Financial Reporting Council has put in place transparent procedures which ensure a separation between decision-making on standards and enforcement. The draft Bill will continue the transition of the FRC into a revamped regulator—ARGA—with powers for the setting of standards, including on accounting, reporting and audit. Decisions to open an investigation under FRC enforcement schemes are taken by the Conduct Committee. Once an investigation has opened, case decisions are taken by the FRC executive council or its deputies based on the recommendation from the independent case examiner, which plays no part in standard-setting.

Lord Sikka (Lab): My Lords, it is fundamentally wrong that a body funded and populated by corporate and audit industry interests makes the rules which affect distribution of income and risks. Its cognitive capture means that Whitehall reforms are neglected. To take just one example, the audit partner of PwC spent just two hours on the audit of BHS. There are still no disclosures about the audit time budgets, composition of audit teams or lists of questions asked by auditors. Why is the Minister not willing to seek the immediate disclosure of these facts?

Lord Leong (Lab): I thank my noble friend for the question. As we know, the UK has certain accounting standards, such as GAAP and the international financial reporting standards. These standards are non-mandatory. However, the Companies Act is very clear that a true and fair view of the accounts must be stated. That is a very high standard, but it is up to the individual or the committee of the company as to what should be reported in the accounts. This new Bill will set much higher standards for companies to abide by.

Lord Sharpe of Epsom (Con): My Lords, can the Government provide assurances that the powers granted to ARGA will not create an overly burdensome regulatory environment that discourages investment in the UK?

Lord Leong (Lab): The noble Lord makes a very good point. At the end of the day, we would like any regulator to perform the work but not to overburden SMEs or, for that matter, to stifle growth, which is the Government's number one priority.

Lord Lemos (Lab): My Lords, the creation of a new auditing authority was first mooted in 2018 under the last Government. Despite numerous statements that this is a priority, firm after firm has collapsed, raising new concerns about the adequacy of the UK's auditing arrangements. While it is of course important that we get this right, can my noble friend reassure your Lordships' House that we will not have to wait another seven years before we make progress?

Lord Leong (Lab): My Lords, my noble friend is right to point out the length of time that it has taken to reach this point. Let us not forget that the collapse of BHS and Carillion caused havoc in the country. It was a wake-up call, when 11,000 people lost their jobs in BHS and 30,000 people lost their jobs in Carillion. Improving auditing standards is an important step, not least to better inform lending and investment decisions. I hope my noble friend will take heart from the fact that this was included in our manifesto commitment and in our first King's Speech. We look forward to the proposals receiving pre-legislative scrutiny in due course.

Lord Davies of Brixton (Lab): My Lords, I draw attention to my declaration of interests. I thank my noble friend for his answers to the questions, but my heart sinks when he talks about presenting the Bill "in due course" and when he will not even tell us what is actually going to be in it. One area that may be covered in the Bill is the regulation of the actuarial profession. At the moment, we have planning blight. Will he please expedite the process?

Lord Leong (Lab): I thank my noble friend for that question and for all the work he has done in the actuarial sector itself. Let us not get ahead of ourselves. The Government are committed to publishing a draft Bill in this Session of Parliament. Until such time, it is important that we do not pre-empt the contents of the Bill.

Baroness Neville-Rolfe (Con): My Lords, the Chancellor has written to other regulators encouraging them to look at ways to help the economy to grow and be more competitive. What are the plans in this area for encouraging growth and competitiveness?

Lord Leong (Lab): The noble Baroness makes a very good point. It is important that, whichever regulator we have, it is effective. Currently, the regulator has some weaknesses in its powers; the new regulator will, I hope, address those weaknesses. It is important that, when anyone looks at the accounts, investors have confidence to make investment decisions. That will drive business and growth.

Lord Pitkeathley of Camden Town (Lab): My Lords, late last year, the chief executive of the Financial Reporting Council said of the transition to an audit, reporting and governance authority:

"It's long overdue. It's the right thing to do. It may sound a bit boring and bureaucratic, but it's really important".

Given the highly technical nature of this area, publishing a draft Bill makes sense. However, can the Minister confirm that this process is being used for genuine scrutiny and not to kick proposals into the long grass?

Lord Leong (Lab): I thank my noble friend for his question. It is true that these reforms are long overdue, which is why this Government are working on them at pace. My noble friend will understand that I cannot pre-empt any pre-legislative scrutiny process for either the content of the draft Bill or the timing of its introduction. However, we are fully committed to delivering these changes and doing so in a way that ensures that parliamentarians, businesses and wider stakeholders are part of the journey.

Lord Watts (Lab): My Lords, the Minister set out some of the recent scandals that have occurred. Can he tell us how many people have gone to jail over those scandals and whether the proposed legislation will hold these people to account?

Lord Leong (Lab): My noble friend makes a very important point. I do not know whether anyone has been sent to jail, but I will find out and write to him. It is important that noble Lords recognise that the current regulator has limited powers. The new regulator will have additional powers to ensure that directors are held responsible for their fiduciary duties. It is important that we get it right and that we consult widely, but, at the same time, we do not want to overburden SMEs and other businesses with the new regulator. We are taking our time to make sure that we get it right.

UK Fishers: EU Agreement

Question

2.56 pm

Asked by ***Lord Roborough***

To ask His Majesty's Government what plans they have to improve outcomes for UK fishers after the current agreement with the European Union expires.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Baroness Hayman of Ullock) (Lab): My Lords, after the end of the fisheries adjustment period set out in the trade and co-operation agreement, European Union access to UK waters, and vice versa, become a matter for annual renegotiation, as is typical between coastal states. We know that the EU wants a new multiannual access agreement. We will listen to what it has to say and will work tirelessly to achieve the best possible outcome for the UK economy and coastal communities.

Lord Roborough (Con): My Lords, there have been alarming reports in the press that our European friends seem intent on securing and even improving their access to our exclusive economic zone fisheries ahead of any negotiation of other issues. Can the Minister confirm that this Government will not only defend but substantially increase the quota position of our fishermen in our waters ahead of the 26 June deadline?

Baroness Hayman of Ullock (Lab): Clearly, as a Government, we will always push for the best opportunities for our fishers and the fishery industry. We would like to see long-term strategies to provide the industry with greater stability, which is important to it. At the same time, it is important that we always follow scientific advice when developing negotiations and catch limits.

Baroness Grender (LD): My Lords, is the Minister aware that, last week in the other place, the Conservative shadow Environment Minister admitted that the previous Government's negotiations failed our fisheries? Does she agree that a rollover of the current system will fail them again? Can she tell the House what consideration the Government are giving to proposals from the Liberal Democrats to roll out a multiyear quota system that would help the industry to plan for the future and stop the current cliff edge?

Baroness Hayman of Ullock (Lab): As I just mentioned, we need long-term strategies to give greater stability to the fishing sector. We are also very keen that we develop our policy in this area by working with the industry and talking to fishers and their representatives, so that they have direct input into how we move forward and that we understand, from their perspective, how best we can support them.

Lord Ricketts (CB): My Lords, given the overriding importance of reaching an early agreement with the EU on defence and security, does the Minister agree

that the right way to handle the issue of fisheries with the EU at this stage is to use the 19 May EU-UK summit to agree to a joint commitment to find a mutually agreeable solution on fisheries within a particular time well ahead of the 26 June deadline?

Baroness Hayman of Ullock (Lab): As I made quite clear, we intend to negotiate with the EU in the best interests of the fishing industry and to protect our fishing communities. However, due to the nature of the current negotiations regarding the EU reset, I am not in a position to give any further information about what we discussed at those meetings.

Baroness McIntosh of Pickering (Con): Does the Minister share my concern that fishers have lost 10% of their grounds through energy use, particularly through the Great British Energy Bill? How does she intend to address this spatial squeeze and ensure that the fisheries' grounds loss is not permanent but will be compensated?

Baroness Hayman of Ullock (Lab): I am sure the noble Baroness is aware—because we have talked about it in relation to other issues with Defra—that we are working closely with other departments in this area, including DESNZ, to address exactly the kinds of issues she raises. I will go back to the department and talk to my colleague the Fisheries Minister, Daniel Zeichner, specifically about the point that she just raised.

Baroness Jones of Moulsecoomb (GP): My Lords, I am sure the Minister knows that we have French and Danish fishing fleets not only fishing in our waters, as per the agreement, but bottom trawling in our marine protected areas. Are the Government going to start protecting those marine protected areas, or shall we call them something else?

Baroness Hayman of Ullock (Lab): The Government are looking with different groups and industry to increase protections across MPAs and at the best way to move that forward. Around 100 of our MPAs have by-laws which are in place to protect designated species and habitats from fishing gear that we know is damaging, including bottom trawling. As I have said before, we are looking at how we can move forward in this area.

Lord Mountevans (CB): My Lords, the Fisheries Minister is looking at better matching the fish we catch in UK waters with what we eat as a nation. Given that the Government spend more than £5 billion on food procurement, can the Minister confirm that they are doing everything possible to support UK fishers and farmers in their procurement?

Baroness Hayman of Ullock (Lab): We have said before in the House that we intend to hugely increase local procurement of food by government departments, hospitals, prisons, schools and so on. Clearly, fish is part of that, as is locally produced food from our farms. We are very keen to move that forward at pace and are currently looking at how best to do that.

Lord Anderson of Swansea (Lab): My Lords, given the urgency and general importance of an agreement on security, has this in any way been made dependent on an agreement on fisheries?

Baroness Hayman of Ullock (Lab): Not to my knowledge.

Lord Hannay of Chiswick (CB): My Lords, will the Minister confirm that, following the trade and co-operation agreement, the Government will enter into post-2026 fisheries issues at the time laid down for that and not at any artificial date, and that they will negotiate in good faith and in good time on that timetable and not on any artificial proposal to advance that date?

Baroness Hayman of Ullock (Lab): We will always negotiate in good faith. Regarding any new negotiations, we do not have any talks with the EU currently scheduled. We are content with the existing agreement and with the full and faithful implementation of the TCA post-2026 fisheries access arrangements. However, we will of course listen to the EU and the industry, and we intend to continue to protect the interests of UK fishers.

Lord Geddes (Con): Can the Minister comment on recent reports that our fishers are using heavier ropes to avoid snagging mammals, whales, dolphins and creatures of that ilk?

Baroness Hayman of Ullock (Lab): I am not aware of any such reports. If the noble Lord would like to share them, I would be very happy to see them. Regarding mammals being caught, we are proceeding with electronic monitoring to get better data. The reports that come in are probably only the tip of the iceberg of the number of mammals that are affected.

Baroness Hoey (Non-Afl): My Lords, sadly, the fishing industry and fishing men and women felt very sold out by the last Government. Will His Majesty's Government now commit to always putting the needs and aspirations of British fishermen and fisherwomen above and beyond those of French fishermen and fisherwomen?

Baroness Hayman of Ullock (Lab): As I previously said, we will be very robust in any negotiations and discussions. It is important that we support our fishing industry and get the best outcomes that we possibly can.

Lord Grocott (Lab): My Lords, is not it important, amid all the intricacies of any discussions that are going on, to remember that we are a sovereign state with our own territorial waters for which we are responsible, and that that is an infinitely better position to be in than when we were members of the common fisheries policy?

Baroness Hayman of Ullock (Lab): I completely agree.

Lord Kerr of Kinlochard (CB): Will the Government remember the inshore fishermen, particularly the Scottish inshore fishermen, whose interest is rapid access to continental markets for their high-value product, and who were so badly Frosted by the previous Administration?

Baroness Hayman of Ullock (Lab): The difficulty with negotiating for fisheries in the UK is that it is such a diverse industry. For example, fishers in Scotland will have very different needs from fishers in Cornwall—from those who may be catching crabs and lobsters to those who are after cod and pollock. It is a very complex area. The outcomes report on sustainability of fishing stocks, for example, is an extremely complex read—if anybody fancies it, I can provide them with a copy. But I completely take the noble Lord's point, which is why we are very keen to work with industry to properly understand what it would like to see in the future.

Lord West of Spithead (Lab): Does my noble friend the Minister believe that we have sufficient ships looking after our territorial seas and our exclusive economic zone—fishery and the things on the seabed—or does she believe, looking at the SDR, that we should get an increase?

Baroness Hayman of Ullock (Lab): I am not certain that we would ever have enough ships for my noble friend to be satisfied.

Employment Rights Bill: Productivity

Question

3.06 pm

Asked by ***Lord Hunt of Wirral***

To ask His Majesty's Government how the Employment Rights Bill will "support the Government's mission to increase productivity", as stated in their factsheet for the bill, and what evidence they have to suggest that it will increase productivity.

The Parliamentary Under-Secretary of State, Department for Business and Trade and Department for Science, Information and Technology (Baroness Jones of Whitchurch) (Lab): My Lords, last year we published a comprehensive package of analysis showing how the Bill could increase productivity. Evidence included in that impact assessment shows that making workers happier and healthier helps boost productivity. This analysis draws on the best available evidence and consultation with external experts and stakeholders. For example, research from the University of Cambridge shows:

"The consensus on the economic impacts of labour laws is that, far from being harmful to growth, they contribute positively to productivity".

Lord Hunt of Wirral (Con): My Lords, the Minister will be aware that small and medium-sized enterprises are the lifeblood of our economy. What analysis have she and her colleagues in Government carried out of the effect on small and medium-sized enterprises of day one rights?

Baroness Jones of Whitchurch (Lab): My Lords, of course we have taken into account the impact on small and medium-sized businesses, but having an entitlement to fair, flexible and secure working should not be available only to those who work for larger organisations. At the moment, 9 million employees—almost 40% of the whole private sector—work in small and micro businesses. Any exceptions to policy based on business size would create a two-tier labour market, with some workers facing fewer protections, leading to an uneven playing field between employers of different sizes and reducing incentives for small businesses to grow.

Lord Fox (LD): My Lords—

Lord Browne of Ladyton (Lab): My Lords—

Captain of the Honourable Corps of Gentlemen-at-Arms and Chief Whip (Lord Kennedy of Southwark) (Lab Co-op): There is plenty of time. We will hear from my noble friend first and then from the noble Lord, Lord Fox.

Lord Browne of Ladyton (Lab): My Lords, the noble Lord, Lord Hunt of Wirral, will be familiar with the Cambridge Centre for Business Research 2024 policy brief, which my noble friend referred to. It is titled *The Economic Effects of Changes in Labour Laws*, and it tracks changes in legislative protection for workers around the world from 1970 onwards, including in the UK. The conclusions of this research speak directly to the Employment Rights Bill. On 5 March, Professor Simon Deakin, the CBR director and co-author of this brief, stated that

"stronger labour protection is associated with higher employment and lower unemployment"

and that

"laws, including those regulating flexible working, working time, and employee representation, can have positive productivity effect".

In anticipation of Committee on the Bill, will my noble friend the Minister join with me in inviting Professor Deakin and his research colleague to come to Parliament and to brief us on their findings, and, if they accept, will the noble Lord, Lord Hunt, accept a challenge to put the case that the CBR's conclusions are not supported by 50 years of global datasets underpinning its research and therefore do not justify the causative link?

Baroness Jones of Whitchurch (Lab): I am grateful to my noble friend. He is citing one example. There are numerous examples of external support for our arguments. Academics at Warwick University, Oxford University, MIT and UCL all find a positive relationship between job satisfaction and productivity in their research—but, of course, I would welcome the opportunity to meet the academic to whom my noble friend referred.

Lord Fox (LD): My Lords, clearly, we have many hours in front of us as we scrutinise this Bill. Much

will depend on definitions and explanation, not least a proper definition of zero-hours contracts and the role of agencies in employment. But the glaring omission is the absence of any mention of freelancers. Does the Minister agree that freelancers form the mainstay of many important sectors, not least our creative industries? Will she undertake to ensure that the Bill focuses as much on freelancers as it does on other sorts of employees?

Baroness Jones of Whitchurch (Lab): The noble Lord is right: we will have many happy hours debating this Bill in Committee and on Report in due course. On the issue of freelancers, he will know that this is only one piece of legislation. The make work pay programme includes a much more substantial piece of legislation. Where issues cannot be resolved fully in this legislation, they will come up in the wider Bills going forward.

Lord Londesborough (CB): My Lords, this claim that the Bill supports productivity falls under the economic analysis section, which some have, perhaps rather unkindly, referred to as the economic fantasy section. The argument is similar to the one used for NICs Bill: increase the cost of employment; take out jobs at the lower-paid end; invest more in tech and innovation; and increase the average productivity of those left in employment. Does the Minister not agree that the danger with a flat economy, such as we have at the moment, is that we end up simply increasing unemployment, depressing real wages and lowering overall growth?

Baroness Jones of Whitchurch (Lab): My Lords, we have to be clear about the fiscal inheritance which we inherited from the previous Government.

Noble Lords: Oh!

Baroness Jones of Whitchurch (Lab): I know noble Lords do not like to hear it, but I am happy to repeat it again. That, of course, demanded tough choices to fix our public services and create long-term growth and investment. The Government have more than doubled the employment allowance to £10,500 for the smallest companies, meaning that more than half of businesses with NICs liabilities either gain or see no change next year. Businesses will still be able to claim employer NICs relief, including those for under-25s and under-25 apprentices, where eligible. These are tough times economically, but we are determined to do everything we can to ensure that our growth agenda remains undimmed.

Baroness O'Grady of Upper Holloway (Lab): My Lords, is my noble friend aware of HSE analysis which shows that unionised workplaces have fewer accidents and injuries and better well-being, and of TUC research showing that unionised workplaces have more investment in skills, better family-friendly policies and a voice for working people? Does she agree that that is good for productivity?

Baroness Jones of Whitchurch (Lab): I am grateful to my noble friend for making these points. I should reiterate that Britain's working people and businesses will be the driving force of the UK economy, but the current labour market is not delivering for either. The productivity gap with France, Germany and the US has doubled since 2008; average salaries have barely increased from where they were 15 years ago; and the average worker would be more than 40% better off if wages had continued to grow as they did leading into the 2008 financial crisis.

A final point: alongside its productivity performance, the UK lags the OECD average on most employment protections. We inherited an economy that was in decline, with poor productivity, and we intend to fix that.

Baroness Coffey (Con): My Lords, Jonathan Reynolds rightly met Rupert Soames, the chairman of the CBI, to listen to its concerns about the reference period for seasonal-hour workers. Will the Minister undertake to meet the FSB, which is looking for a rebate of statutory sick pay? The Government should consider this, at least for days 1 to 3.

Baroness Jones of Whitchurch (Lab): My Lords, of course I am happy to meet with all the stakeholders. No doubt a programme will be put together to do just that.

Baroness Wheatcroft (CB): My Lords, does the Minister accept that one of the best motivators in the workplace is employee share ownership? What do the Government intend to do to increase the extent of employee share ownership? What incentives might they consider?

Baroness Jones of Whitchurch (Lab): The noble Baroness makes a very good point. It is slightly beyond my brief today, but I am sure that if there is scope we will embrace that idea, which is a very sensible one.

Lord Woodley (Lab): My Lords, as a former leader of the Unite the Union, I warmly welcome this Bill, but I would like to see it go a little bit further when we deal with sectoral collective bargaining. Can the Minister listen to employment rights experts when they say that sectoral collective bargaining underpinned by legislation is the right way to achieve wider and broader growth in the economy and, importantly, a growth in productivity?

Baroness Jones of Whitchurch (Lab): The employment Bill that we have before us today is a very substantial piece of legislation. There will be further opportunities in the make work pay plan to come back to some of the wider issues and I look forward to debating those when the opportunity arises.

Lord Sharpe of Epsom (Con): My Lords, at Second Reading last week, I asked the Minister to name one company—apart from the four that are routinely trotted out by the Government—that is supportive of this Bill. She did not answer the question, so I invite her to have another go, because we would really like to talk to them.

Baroness Jones of Whitchurch (Lab): The noble Lord will know that we have had extensive discussions

[Baroness Jones of Whitchurch]
with all the employment bodies that are engaged. Those stakeholder discussions are continuing. I am sure that we can provide further details, but the important thing is that those stakeholders have been engaged and listened to. We are continuing with that engagement and that will help the policies going forward.

Business of the House
Motion on Standing Orders

3.17 pm

Moved by ***Baroness Smith of Basildon***

That with effect from Tuesday 22 April, Standing Order 38(4) (so far as it relates to Thursdays) and (5) (*Arrangement of the Order Paper*) be suspended until the end of the session so far as is necessary to enable notices and orders relating to Public Bills, Measures, Affirmative Instruments and reports from Select Committees of the House to have precedence over other notices and orders on Thursdays.

Motion agreed.

Disclosure (Scotland) Act 2020 (Consequential Provisions and Modifications) Order 2025
Motion to Approve

3.17 pm

Moved by ***Baroness Smith of Cluny***

That the draft Order laid before the House on 11 February be approved.

Relevant document: 18th Report from the Secondary Legislation Scrutiny Committee. Considered in Grand Committee on 25 March.

Motion agreed.

Electronic Communications (Networks and Services) (Designated Vendor Directions) (Penalties) Order 2025
Motion to Approve

3.18 pm

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

That the draft Order laid before the House on 11 February be approved. *Considered in Grand Committee on 25 March.*

Motion agreed.

Town and Country Planning (Fees and Consequential Amendments) Regulations 2025
Motion to Approve

3.18 pm

Moved by ***Baroness Taylor of Stevenage***

That the draft Regulations laid before the House on 13 February be approved. *Considered in Grand Committee on 25 March.*

Motion agreed.

Scunthorpe Steelworks
Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 27 March.

"First, my thoughts are, and the thoughts of all honourable Members will be, with British Steel workers and their families, following the company's announcement of plans to close the blast furnaces and other steelmaking assets at Scunthorpe, and its commercial decision to consult on redundancies. This is not what we wanted, and I know how worrying it will be for all those involved. I am grateful to my honourable friend the Member for Scunthorpe, Sir Nicholas Dakin, who is in his constituency today engaging directly with his local community.

In the immediate term, we must support the people who work at British Steel. Our contingency plans have kicked in to ensure that all possible support is made available to British Steel's workforce. Both the Department for Work and Pensions and the Department for Education will have teams on the ground shortly to engage with employees for as long as necessary. We have asked British Steel that officials be given direct access to British Steel sites to bring their support as close as possible to affected workers.

This Government inherited a steel sector in crisis, and resolving the long-standing uncertainty around the future of Scunthorpe has been a priority from our first days in office. That is why, when we committed up to £2.5 billion of investment to support our steel industry, we earmarked substantial funding to support British Steel, in addition to the funding allocated to our new and improved deal with Tata Steel.

I confirm today that we have taken another significant step forward. On Monday, my right honourable friend the Business and Trade Secretary made a generous conditional offer of financial support to British Steel designed to deliver a sustainable future for the workforce, industry and local communities. In the light of the challenging fiscal context, this speaks volumes about our commitment to the steel industry. The offer follows months of intensive engagement with British Steel to reach a deal that meets our public accountability and legal requirements, works for local people and UK taxpayers, safeguards as many jobs as possible and ensures the company's long-term commercial viability. The offer that we have made is conditional on British Steel meeting those key tests, which is consistent with our approach to similar investment deals.

The company must provide the commitments that we need, and which taxpayers would quite rightly expect, in exchange for substantial public funding. It is regrettable that it has not yet done so or accepted our offer. I therefore call on the company to reconsider its plans to announce early closures, accept our conditions and accept our generous offer, which remains on the table.

I assure the House that we are working tirelessly to find a solution. We believe that there is a bright future for steelmaking in the UK, and we call on British Steel to work in partnership with a Government who care deeply about the steel sector to put the business on a sustainable footing for the future and to put an end to the years of uncertainty at Scunthorpe".

3.20 pm

Lord Hunt of Wirral (Con): My Lords, the Minister will of course be aware that there would be severe economic and social implications if these blast furnaces are closed, but does she acknowledge there would be vitally important national security concerns as well? Will she ensure that such concerns are taken fully into account right across the Government?

The Parliamentary Under-Secretary of State, Department for Business and Trade and Department for Science, Information and Technology (Baroness Jones of Whitchurch) (Lab): My Lords, as the Minister for Industry made clear on Thursday, this Government believe in the UK steel sector. Of course we take national security issues very seriously. We keep developments in all strategic industries, including steel, under constant review. For example, high-quality steel, including for defence programmes such as the Royal Navy's new Dreadnought-class submarines, is already being made by UK EAF producers. British Steel is not a critical supplier for other defence programmes.

Lord Fox (LD): My Lords, I am sure the Minister would join all your Lordships in expressing sympathy to the workers and communities not just in Scunthorpe but in Teesside who have had their steel industries whipped away from them. We have not heard much about the Government's modern industrial strategy lately. We need one across the country and, as we have heard, we need steel to ensure we have the raw materials for manufacturing and our defence industries. If there is one, can the Minister set out for your Lordships what the Government's steel industrial strategy is? What are the three key elements of that strategy?

Baroness Jones of Whitchurch (Lab): My Lords, steelmaking in the UK is absolutely fundamental. We are in the process of developing a detailed steel strategy and we will come back to your Lordships' House with further details. I make it clear that the Government will simply not allow the end of steelmaking in the UK, despite the situation we inherited, in which there has been a 50% decline in crude steel production over the past decade. We will continue to give steel, and steel in the UK, an absolute priority.

Baroness Redfern (Con): My Lords, I refer to my interests in the register. The closure of Scunthorpe's blast furnaces and other steelmaking sectors is devastating news for almost 3,000 workers and their families. British Steel must not allow the final two blast furnaces to close until the two arc furnaces are installed to continue producing steel and ensure customers do not have to rely on international supplies. Will the Minister reaffirm that all options remain open, including a strong national intervention to protect our proud steel industry and ensure that British steel continues to be made here in the UK? Will she also reaffirm support for Scunthorpe's green growth zone and companies in the artificial intelligence sector?

Baroness Jones of Whitchurch (Lab): I thank the noble Baroness for that question and reiterate that steel is an absolute top priority for this Government. We have made a generous conditional offer on financial support for British Steel, and negotiations are continuing with the company and trade unions to find the best possible outcome that will protect jobs, steel-making and taxpayers' money.

We obviously cannot pre-empt the outcome of the consultation process. However, we have extensive cross-departmental contingency plans in place to ensure that British Steel workers, their families and the wider Scunthorpe community will be protected. They include plans to establish a task force, should this become necessary, which will consider and prioritise measures that create jobs and support the local economy through recovery.

Baroness McIntosh of Pickering (Con): My Lords, is it really the case that neither the Scunthorpe nor the Teesside steelworks will remain open? Does that leave us as the only major country in Europe without any steel-producing facility?

Baroness Jones of Whitchurch (Lab): The Government will simply not allow the end of steel-making in the UK. We are looking seriously at options for primary steel-making here. With the help of independent experts, we are reviewing the requirements and viabilities of technologies for the production of primary steel in the UK, including direct reduced iron. As I say, steel is an absolute priority for this Government, and we will be producing a steel strategy very soon.

Lord Sikka (Lab): My Lords, it is good to hear the Minister talk about developing a steel-making strategy, but I am sure that she appreciates that it is impossible to have a successful steel-making strategy without controlling the cost of energy. The cost of industrial energy in the UK is about seven times that of China and three to four times that of France or Germany. I have met steel executives in this place, who are basically saying that their industry cannot survive unless the Government control the profiteering of energy companies. How are the Government going to control profiteering by energy companies?

Baroness Jones of Whitchurch (Lab): My Lords, we continue to do everything that we can to protect the steel industry. That obviously includes looking at the costs concerned. If necessary, we are committed to providing £2.5 billion to help rebuild the steel industry over the next five years. This will be available through the National Wealth Fund and other routes. We are continuing to look at what further steps need to be taken to protect the steel industry in this country.

Lord Macpherson of Earl's Court (CB): My Lords, do the Government agree that in recent years private sector steel producers have effectively had the Government over a barrel in negotiations? Will they commit to protecting taxpayers' interests alongside the jobs of those working in the steel industry?

Baroness Jones of Whitchurch (Lab): The noble Lord is right that this is a balance, but there are many good reasons why we need a steel industry in the UK, although obviously not at any price. We have made a

[Baroness Jones of Whitchurch]
significant offer of financial support to British Steel, and I hope that when those discussions continue the matter will be resolved.

Lord Fox (LD): My Lords, I detected a dissonance in the answers there. At one point, the Minister said that we will always have a steel industry, but she just said "not at any price". Those two things do not work together, so which is it? Is it we will have a steel industry whatever or there is a price that we will not pay for the steel industry?

Baroness Jones of Whitchurch (Lab): As I say, we have made a very generous conditional offer of financial support to British Steel and negotiations are continuing. This is a live negotiation, and I cannot comment on commercially sensitive details at this stage, but we believe that our co-investment offer is fair and generous. We call on British Steel to accept that offer and the associated conditions. Obviously, there is a point at which those negotiations will not come to fruition, and we are making contingency plans, but we very much hope that we do not have to use them.

Lord Hunt of Wirral (Con): My Lords, we should all just reflect for a moment on the agonies that so many families who are so deeply involved in this crisis must be going through. Following the remarks that the Minister has just made, can she give us some idea of the timescale to which the Government are working? She has made much of the fact that a generous offer has been made and, obviously, there are so many different interests to balance. However, returning to the point I made at the start of this short exchange, there are, above all, huge areas of national security here. Will she ensure that, within a limited timescale, all the Government, in particular the Ministry of Defence, are involved in reaching the decisions that must be made?

Baroness Jones of Whitchurch (Lab): First, the noble Lord is absolutely right that this is a very worrying time for British Steel's workers and all those who are affected. First and foremost, we are thinking of them. The negotiations are live and continuing. We will continue to negotiate for as long as we can. There is certainly no deadline in our mind. We will continue to keep that pressure up. We want this matter to be resolved. We feel we have made a good offer and very much hope that those negotiations will be fruitful and that we can find a package with British Steel that is acceptable.

PIP Changes: Impact on Carer's Allowance

Commons Urgent Question

The following Answer to an Urgent Question was given in the House of Commons on Thursday 27 March.

"The *Pathways to Work* Green Paper sets out our plan to fix a broken system, providing proper employment support for those who can work, and a strong and sustainable safety net for everybody who needs it. We will change personal independence payments to focus support on those in the greatest need. That change will be in primary legislation, with a full debate and scrutiny in Parliament. The cost of personal independence payments has increased by £2 billion above inflation in each of the past five years, and those increases are carrying on. That is simply not sustainable.

In the Green Paper, we are consulting on how best to support those affected by the changes to eligibility, for example with transitional protections for those no longer eligible for PIP and for the entitlements linked to it, including carer's allowance, as referenced in the honourable Member's Urgent Question, and the universal credit carer element, which is an increasingly important part of the picture. The PIP changes will be implemented from November next year. They will apply to new claimants and to people at their award review after that date, and those with severe conditions who will never work will be protected.

I pay tribute to the millions of unpaid carers across the country. We recognise and value their vital contribution, providing care and continuity of support, including to many people with disabilities. The 2021 census indicated that approximately 5 million people in England and Wales are doing some unpaid care. As the honourable Member knows, we are delivering the biggest ever cash increase in the earnings threshold for carer's allowance, increasing it by £45 a week to £196, benefiting more than 60,000 carers by 2029-30. Our reforms will build a system that is fairer and more sustainable so that it will always be there for those with the greatest needs to live with the dignity and support that they are entitled to".

3.30 pm

Baroness Stedman-Scott (Con): My Lords, I am sure that all noble Lords will agree that carers provide vital services and support to those who desperately need them. The speculation, leaks and briefings have spread fear, anxiety and distress among the most vulnerable about cuts to benefits, particularly for carers. How will His Majesty's Government ensure that clear, effective and timely communication gets to those who will lose benefits and those who will not? What help and assistance will be provided to those who have had the cruellest of times as a result of this rushed decision?

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Sherlock) (Lab): My Lords, the one thing we can definitely agree on is that we support carers. We are grateful for the work they do. Society has reason to be grateful for the work they do. This Government have supported them. We have shown that by, for example, boosting the carer's allowance earnings threshold by £45 a week to the highest level it has ever been since the benefit was created in the 1970s, benefiting more than 60,000 carers by 2029-30. The Government are making necessary changes to stem the rising costs and reform the focus of our sickness and disability benefits system. Those changes will affect some people on carer's allowance.

The noble Baroness need not worry about reading leaks. All the details are set out in the Green Paper, which I commend to her as a good read for this evening, perhaps before she goes to bed. We are

deliberately setting out to consult on how we can support those affected by any of the measures in it. I assure her that nothing will happen overnight. No one is going to lose their benefits overnight. Even when the new changes come in, nobody will lose their benefits until there has been a full and individual assessment of their personal circumstances.

Lord Laming (CB): My Lords, I am sure the Minister will agree that our society, with an ageing population and keeping people with profound disabilities alive, is increasingly dependent on carers. Can the Minister assure the House that nothing will be done that will undermine the value we attach to carers' responsibilities and make them feel that our society does not value them as a whole?

Baroness Sherlock (Lab): I thank the noble Lord for that excellent question. I reiterate our absolute appreciation of the work that is done by both paid and unpaid carers. We are very conscious of the fact that, as a country, we have not been able to sort out the problems in our social care system. Adult social care has put extra pressure on to unpaid carers, which is one of the reasons—a clear reason—why we have asked the noble Baroness, Lady Casey, to produce a report by next year on the medium-term challenges, so that we can try to get a long-term fix by 2028. In the short term, I hope that carers will be reassured by the investment the Government are making to, for example, allow them, for the first time ever, if they are working alongside caring, which many are, to earn the equivalent of 16 hours at the national minimum wage before losing any of their benefit.

Lord Palmer of Childs Hill (LD): My Lords, forgive me if some of the statements and replies are confusing to me. Something is said in one place and something is said in another. Can the Minister tell us why, in the debate that followed her Spring Statement last week, the Chancellor said that the Government were providing "additional support for carers", when they are actually reducing carers' benefits spending by £500 million by 2029-30? The statements and replies are confusing.

Baroness Sherlock (Lab): My Lords, there is confusion, but I do not think it is the Chancellor who created it. I have heard a suggestion that carers' benefits are being cut. Let me be clear: carers' benefits are not being cut. Carer's allowance will rise to £83.30 from next week, or the end of this week, and the Government have boosted the earnings threshold in carer's allowance by the highest ever amount.

Secondly, reforms are being made to disability and sickness benefits. One of the consequences of those is to change some of the people who currently are entitled to the personal independence payment. Because carer's allowance is paid to people who care for someone on personal independence payment, there will be some people currently getting carer's allowance for whom there may not be an entitlement in future.

We spelled out clearly in the Green Paper that we would look at how we could support those who are losing entitlement in general as well as, specifically, carers who are losing entitlement. I want people to be clear: we are not cutting the value of the benefit; we are not changing the fact that they can earn more—but there will be some people who are getting carer's allowance now, and who might have got it in the future, who will not get it. However, given the rate at which the PIP case load is growing, with all the changes that we are making we are stemming the rate at which spending on sickness and disability benefits goes up, not cutting it.

Baroness Lister of Burtersett (Lab): My Lords, at the very end of the Green Paper, in an annexe, is, I believe, the one and only reference to the impact of the personal independence payment cuts on unpaid carers. It says:

> "The government will consider the impacts on benefits for unpaid carers as part of its wider consideration of responses to the consultation as it develops its detailed proposals for change".

As the impact on carers is not included in the list of questions for consultation, can my noble friend the Minister explain exactly how the Government propose to consult on it? Are we talking about anything more than possible transitional protection?

Baroness Sherlock (Lab): My Lords, I cannot tell my noble friend at this stage what it will be, both because we are listening to the wider views and because we are going to take our time to work this through. To be clear, we specifically said in the Green Paper that we would look at the impact on carers and look at ways in which we could support carers who might find themselves losing entitlement to carer's allowance.

To give a sense of timescale, assuming that Parliament approves the primary legislation that will bring about these changes to disability and sickness benefits, the changes to PIP that will affect carer's allowance will not come in until November 2026. Only after that will somebody who is getting PIP at the moment see their entitlement change. It will be only as and when they are called to a review and their own circumstances are reviewed that their entitlement changes, which could in turn affect carer's allowance. So I am confident that we have plenty of time available to us to work through the way in which we can support those who will lose out as a result of these changes.

Baroness Browning (Con): My Lords, will the Minister explain how the Government will approach what is an increasing number of households, particularly as people get older, where you have two people in a household, both with some level of incapacity and one in receipt of PIP, who may lose it? How will the Government assess the carer who has health issues and get a balance that recognises that, for those two people living together, there is a level of support between the two? Remove the finance from one of them and you affect two people.

Baroness Sherlock (Lab): The noble Baroness is right. There are cases—unusual cases—where both members of a couple are entitled to sickness or disability benefits, and even cases where both are getting carer's allowance to care for each other. I do not know how many such cases there are. For that to work, each party would have to be sufficiently sick or disabled to be entitled to PIP, and would have to lose it, and each

[Baroness Sherlock]
would also have to be able to provide at least 35 hours' unpaid caring work a week. It is not that such circumstances are not there, but the interaction of different parts of our benefit system is complex, which is why we want to take our time to work through the impacts on various circumstances.

Baroness Brinton (LD): Will the Minister explain the interrelationship between the DWP and the Department of Health and Social Care? Many unpaid carers are unable to work because of the many hours of care they provide. If they lose their carer's allowance they will have to return to work, which will mean that the disabled people they care for have to have care provided by the state. Does the Minister have any figures to hand?

Baroness Sherlock (Lab): Some people get carer's allowance—I know the noble Baroness understands this, but this is for the benefit of the House—while others will have a carer's element in universal credit, and that automatically means they are not expected to be available to work. However, I assure her that work coaches can adjust conditionality in individual cases, taking account of the caring responsibilities, even if the carer's element is not paid. Again, we will look at this as part of our consideration of the impacts.

Baroness Andrews (Lab): My Lords, I am grateful to the Minister for what she has said. I would expect nothing less from our Government than support for unpaid and paid carers. Exactly what arrangements are being made for consultation with unpaid carers? They are an inchoate and ununionised bunch, although there are many admirable charities. In a related question, what are the latest figures for the assessment of carers who are still falling into the trap of unwittingly working too many hours and therefore are still being penalised by DWP? We were told that the Government were acting on that.

Baroness Sherlock (Lab): My Lords, those are two important questions. I know we are working up the consultation process at the moment. That process will not start until we publish all the versions of the Green Paper in early April, including the accessible versions, but we are holding public events in person and virtually, as well as being open to written responses. I will make sure that we are open specifically to comments from unpaid carers.

On the question of overpayments and carer's allowance, my noble friend may be aware that we have started an independent review into carer's allowance overpayments, which will conclude this summer. It is being led by Liz Sayce, who brings enormous experience as a former Disability Rights UK chief executive and now a visiting professor in practice at the LSE. The review is specifically focusing on carer's allowance overpayments. We are trying to work through the questions of how to manage that at the moment and whether there is there any way to reform the system to stop this happening in future.

National Insurance Contributions (Secondary Class 1 Contributions) Bill

Commons Reasons

3.42 pm

Motion A

Moved by ***Lord Livermore***

That this House do not insist on its Amendment 1B, to which the Commons have disagreed for their Reason 1C.

1C: Because the Lords Amendment interferes with the public revenue, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

The Financial Secretary to the Treasury (Lord Livermore) (Lab): My Lords, I will also speak to Motions B, C and D. On Motions A, B and C, the other place has disagreed with Amendments 1B, 5B and 8B as they would interfere with public revenue. The other place did not offer any further reason, trusting that this reason is deemed sufficient. On that basis, I hope that noble Lords are content not to insist on Amendments 1B, 5B and 8B.

I turn to Motion D. The other place has disagreed with Amendment 21B for the reason that the Government and the OBR have already outlined the impacts of this policy change. I have no doubt that the amendments tabled at previous stages of the Bill by the noble Baronesses, Lady Neville-Rolfe and Lady Noakes, and the noble Lord, Lord Londesborough, were well intentioned, and I am grateful to them for ensuring that these important matters have been properly addressed during our debates.

More broadly, I assure all noble Lords that giving careful consideration to and properly assessing the impact of the Bill is a priority for this Government. I commit on behalf of the Government to continually monitoring and assessing the impacts and effects of these policies.

Specifically with regard to special educational needs and disability, which has been the subject of several such amendments, the Government recognise the challenges within the SEND system, where outcomes for children and young people are often poor. The Government understand that change is urgently needed and we are committed to delivering long-term, sustainable change.

On the issue of SEN transport, while the Government do not expect the changes to national insurance to have a significant impact on home-to-school travel for children with SEND, I can commit that all these issues will be fully considered as part of the forthcoming spending review. On that basis, I hope that noble Lords will be content not to insist on Amendment 21B. I beg to move.

Baroness Neville-Rolfe (Con): My Lords, I simply thank the Minister and, again, all who have been involved in the passage of this difficult Bill, especially those who have supported me and my noble friend Lord Altrincham. We have had seven days of debate in

the House and nine successful votes, in collaboration with other Benches. That demonstrated the serious concerns about this Bill, right across the House.

There is a strong feeling, echoed externally in our hospices, in hospitality, on the high street and in many other places, that the Bill is not the best way to meet the challenges that the country faces, and that it will endanger the growth we need so badly. However, this is a House of scrutiny, and the other place has taken a different view. As a responsible Opposition, we will not seek to defeat this Bill, no matter how deeply we feel about it. His Majesty's Government must be able to set their tax policy, and of course we respect that.

I should add that I am grateful to the Minister for his closing words, especially in relation to SEND transport, and for his undertaking to monitor—as I think he said—the impacts and effect of the Bill going forward. We will hold him to that. Moreover, he knows that I and one or two others will continue to encourage the Treasury to learn from all of this and experiment with fuller sectoral assessments in the future.

Baroness Kramer (LD): My Lords, the amendments that underlie Motions A and B that came from the House of Lords were in the name of my colleague and noble friend Lord Scriven. On his behalf, and on behalf of my Benches, we recognise that we have come to end the of the road on this Bill and we will not press for any further amendments.

I will make a couple of comments. I have just come from a fairly extensive meeting with R3, the insolvency and restructuring professionals' body. Those around the table were telling me of the cascade of small businesses that are already going into voluntary insolvency because of the increasing costs that they face this April. When the Minister says that he will look at evaluating the Bill and its impacts, I hope he will make sure that his view casts across that territory, because it is obviously fundamental to the agenda for growth. Within those discussions, of course, were many private social care providers. A number of the smaller ones—at least three of the practitioners around the table—were dealing with insolvencies triggered over the last few weeks.

From what the Minister said, I hope that he and his Government will recognise that they now need to use other means to step in and shore up the key sectors that are faced with costs they cannot sustain and are therefore closing services which we absolutely need. I hope very much that his commitment to ongoing evaluation will incorporate all of that and be granular—we were hopeful when we heard his words on SEND transport, because that is quite a granular issue—rather than the overarching kind that we have been dealing with in this House.

However, the Minister has always been gracious. I understand that this has been exceedingly difficult and that the Government face very difficult and strenuous times. We recognise that, at this point, we can take this Bill no farther. We thank everyone who has participated, from all Benches, and all the people in our back offices and Whips' offices who have provided so much support.

Lord Londesborough (CB): My Lords, I too thank the Minister for his comments. It is with regret that I will neither insist on my Amendment 8B nor plan to add any further amendments. The other place has played its financial privilege card for the second time, even though this amendment had been radically and pragmatically modified to simply provide the Treasury with the option of a statutory instrument to reverse the big drop in the NICs thresholds for small businesses. It will discover this in the economic damage that this Bill will potentially do to employment and growth.

In the meantime, I simply thank noble Lords—almost 300 of them—for voting for my amendments. I especially thank the noble Baronesses, Lady Kramer and Lady Neville-Rolfe, for their unflagging and invaluable support. I thank the Minister for his patience and for at least listening; I appreciate that he had little or perhaps no room for manoeuvre. I support the Government wholeheartedly on their overriding mission of economic growth, but I remain baffled, bemused and bewildered by their policies.

Lord Livermore (Lab): My Lords, I am grateful to all noble Lords who have spoken today and all noble Lords who have taken part in all stages of this Bill for their careful scrutiny; I thank them for their thoughtful contributions. I thank the noble Baronesses, Lady Neville-Rolfe and Lady Kramer, specifically for indicating that they will not be insisting on their amendments today.

As I have set out, the other place has disagreed with Lords Amendments 1B, 5B and 8B, as they interfere with public revenue. They did not offer any further reason, trusting that this reason is deemed sufficient. The other place also disagreed with Amendment 21B for the reasons I have set out. On this basis, I hope noble Lords are content not to insist on these amendments.

Motion A agreed.

Motion B

Moved by ***Lord Livermore***

That this House do not insist on its Amendment 5B, to which the Commons have disagreed for their Reason 5C.

5C: Because the Lords Amendment interferes with the public revenue, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Motion C

Moved by ***Lord Livermore***

That this House do not insist on its Amendment 8B, to which the Commons have disagreed for their Reason 8C.

8C: Because the Lords Amendment interferes with the public revenue, and the Commons do not offer any further Reason, trusting that this Reason may be deemed sufficient.

Motion D

Moved by ***Lord Livermore***

That this House do not insist on its Amendment 21B, to which the Commons have disagreed for their Reason 21C.

[Lord Livermore]

21C: Because information has already been published about these matters and a further review is not necessary.

Motions B to D agreed.

Mental Health Bill [HL]

Report (1st Day)

Relevant documents: 10th and 18th Reports from the Delegated Powers Committee. Welsh legislative consent sought.

3.52 pm

1: After Clause 3, insert the following new Clause—

"Application of the Mental Capacity Act 2005: autism and learning disability

(1) In Schedule 1A to the Mental Capacity Act 2005, paragraph 2, after the last line of the table, insert—

"Case F	P has autism or a learning disability and is not subject to any of the mental health regimes	See paragraph 5A"

(2) In Schedule 1A to the Mental Capacity Act 2005, paragraph 5, at end insert—

"5A (1) This paragraph applies in Case F in the table in paragraph 2.

(2) P is ineligible if the following conditions are met.

(3) The first condition is that P objects to being—

(a) admitted for treatment as a mental health patient, or

(b) given some or all of the mental health treatment.

(4) The second condition is that a donee or deputy has not made a valid

decision to consent to each matter to which P objects.

(5) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—

(a) P's behaviour,

(b) P's wishes and feelings, and

(c) P's views, beliefs and values.

(6) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.

(7) For the avoidance of doubt, Case F and this paragraph do not apply to determine P's ineligibility in respect of admission for assessment of mental disorder.""

Member's explanatory statement

This amendment to the Mental Capacity Act 2005 would prevent the Deprivation of Liberty Safeguards scheme being used to replace detention under section 3 of the Mental Health Act for people with learning difficulties or autism who do not have a mental health condition.

Baroness Browning (Con): My Lords, I will speak to Amendment 1, which is in my name, and then to Amendment 4, in the same group, to which I have added my name.

Amendment 1 is exactly the same amendment that I tabled in Committee. I have brought it forward yet again because I felt it was so important and I did not feel that we went into as much detail as we should have to recognise the real challenge that the Mental Capacity Act could have to the Mental Health Act, as amended by the Bill we are debating. I am enormously grateful to the Minister; she has not only had a one-to-one meeting with me specifically about this clause but has sent me a letter. I hope it will be appropriate for me to quote some of it.

I am concerned, as are others, including many charities—I refer to the charities I am registered to in the record—such as the National Autistic Society, Mencap and of course the Law Society, which I am grateful to for drafting this particular amendment. There is a difficulty with the Mental Capacity Act. Under the Bill, we wish to prevent people with autism and learning disabilities who have no additional identified mental health condition being deprived of their liberty—they should not be. The worry is that the existing Mental Capacity Act will be used instead to take away their liberty and admit them to a mental health hospital. We know the history in this area, which we have debated many times in this House.

In my discussion with the Minister, I raised with her the fact that the NHSE service model for commissioners sets this out very clearly. At 4.3, it says:

"Alternative short term accommodation (available for a few weeks)"—

we are talking about just a few weeks—

"should be available to people, as and when it is needed, to be used in times of crisis or potential crisis as a place where they can go for a short period, preventing an avoidable admission into a hospital setting. It might also provide a setting for assessment from teams providing intensive multi-disciplinary health and care support (see principle 7) where that assessment cannot be carried out in the individual's home".

I think we all recognise that there will be some circumstances under which people will not be able to remain wherever they are, in either their domestic home or their normal place of residence. But, none the less, there should be alternatives to them being admitted to a mental health hospital.

To detain them under the Mental Capacity Act and the DoLS—deprivation of liberty safeguards—has other consequences. Those rights in the Mental Capacity Act include the rights of the nearest relative or nominated person to object to discharge, accessible and automatic referrals to tribunals, independent reviews of medical treatment, statutory care and treatment plans, and of course Section 117 aftercare. So it is not a question just of the Mental Capacity Act being used to deprive people of their liberties; there are associated issues that almost take away even more rights from the individual.

As I mentioned, the Minister and I have discussed this in some detail and I am very grateful to her for agreeing in her letter to me, first, that she has concern—I believe she has genuine concern—about this area. In order to mitigate what might happen under the Mental Capacity Act, she has shared something with me in her letter. I hope this does not seem impertinent, but it is such a good letter and I hope she will put it in the Library, because I am sure it would be of interest to many people in the House. She gave me a lot of data about how the Government are already making sure, and will continue to make sure, that there is proper monitoring of people who are detained under the Mental Capacity Act who may have autism or a learning disability but who do not have an associated mental health condition.

In bold letters, the letter says:

"Ahead of the changes to Part 2, Section 3, we commit to monitoring the data on the number of people with a learning disability and autistic people detained under the MCA"—

Mental Capacity Act—

"and will include a line on this in our standard publications".

The existing data shows that the number is very few—it is in single figures. But, although it is in single figures, the Act that we hope to put on the statute book does not want anybody: we do not want even one person detained, as they have been previously. We hope that the Mental Capacity Act will not be used.

In addition to this commitment in bold from the Minister in this letter, I am half-comforted, because the other half of the equation is what happens if people are to stay in the community but in specialised environments and with specialised staff to deal with what might be a crisis. We have mentioned that, with autistic people, there could be a meltdown, which can be quite traumatic for the individual and for the people around them dealing with them, but is not a psychotic incident—an autistic meltdown is not a psychotic incident and it does not warrant automatic admission to a mental health hospital. How are we to identify suitable places when these facilities are needed? Again, the Minister has made commitments to the services that should be available in the community for people with autism and learning disabilities to make sure that those services and facilities are available.

4 pm

It is at this point that I take a deep breath, because the Minister will know that she has already indicated in Committee that many of the facilities that are needed and are expected as a result of this legislation need to be in place before this legislation is enacted. Already, at the time that we are debating it, we are expecting that this is not one of those Bills that will get Royal Assent and then be enacted pretty quickly; there are going to be delays while services and facilities are put in place. That is a very good thing—but in terms of the alternative facilities to what I would describe as incarceration, we need to be quite sure that there will be the resources, and this is something that will not be enacted for many years. I am not expecting it this year and I would be surprised if it was next year—but, after that, I would be getting worried if that facility was not available. When the Minister replies, I hope that she will be able to give some more tangible examples of how these facilities will go ahead and who will be responsible for them.

I am very grateful to the Minister, who has taken great care and gone into a great deal of detail on both these counts—on the data and the collection—to make sure that people are not caught in the Mental Capacity Act trap. She has also made it very clear that she is expecting, as a result of this legislation, facilities to be available to deal with this in a competent and humane way.

I move on to say a few words about Amendment 4 in the name of my noble friend Lady Hollins. I have added my name to that amendment, which also looks at the sorts of services and facilities that will be available to autistic people and people with learning disabilities. At this point, I wish to say something to the Minister—and I hope that, if she has not investigated it, she will agree to investigate it.

At the time when we are debating this, there is a Select Committee upstairs looking into the Autism Act 2009. Some of us are on that committee but unable to attend this afternoon because we are here in the Chamber. In 2009, I served in the Commons on the Autism Bill, a Private Member's Bill from the late Dame Cheryl Gillan MP, and we put on the statute book the Act—the only Act of Parliament, other than the Mental Health Act itself, that is particular to a specific condition. We had a lot of compromise in getting the 2009 Act on to the statute book, but one of the good things that we got was a bit of a guarantee from a Minister about the duties to provide services for people with autism. I would like to put that on the record. It is a very short piece of legislation—I am holding the whole Act of Parliament in my hand at the moment and I shall quote Section 3(2), with the heading "Local authorities and NHS bodies: duty to act under guidance", which says:

"Guidance or revised guidance is to be treated as if it were general guidance of the Secretary of State under section 7 of the Local Authority Social Services Act 1970 (c. 42) (local authorities to exercise social services functions under guidance of Secretary of State)".

Underneath it, it says, for the purpose of that revised guidance, that it applies also to NHS bodies.

Therefore, both health and social services, unusually, come within the remit of this guidance, which has been on the statute book for a long time. Basically, it says that if services for people with autism are not provided or do not come up to scratch, the Secretary of State—under the local authority Act—has the power to call in the local authorities or health to question them as to why those services have not been provided.

I have to tell the House that in the years since the Act went on the statute book, I have periodically put down Written Questions to ask Ministers how many times the Secretary of State has called in someone from health or from a local authority because their services to the autistic community have been wanting. I can categorically say that, shockingly, no Secretary of State has ever exercised the power in the Autism Act. The Minister will get the point immediately, but I am worried that commitments in the Bill we are talking about today will somehow fall down the same black hole that this has gone down. This is one of the main reasons why I was particularly anxious that this House should post-legislatively review the Autism Act 2009.

I hope that when the Minister responds to these amendments, even if she has not read the Autism Act or is not familiar with this particular part of it, she will give some commitment that Secretaries of State will not ignore the promises made about services in this Bill and that we can be sure that those services will be in place before the Bill is enacted. I beg to move.

Baroness Hollins (CB): My Lords, I will speak to a number of amendments in my name. I thank noble Lords who have added their support. I also support the amendment in the name of the noble Baroness, Lady Browning. I thank the Minister for the very helpful meetings and correspondence about the outstanding issues my amendments seek to rectify. I apologise for the slightly lengthy explanation that follows.

[Baroness Hollins]

I declare my interests: I have the benefit of expertise from a psychiatrist attached to the Royal College of Psychiatrists parliamentary scholar programme and research support from a PhD student from King's College London. Until November 2024, I was chair of the independent oversight panel to review the use of seclusion and segregation for adults with learning disabilities and autistic people. I am grateful to panel members for advice on my amendments relating to long-term segregation. The key message of the report published by the panel, *My Heart Breaks*, was that long-term segregation has no therapeutic benefits and that it can retraumatise already traumatised people.

When the Mental Health Act was introduced in the early 1980s, our understanding of learning disability and autism was limited, and therapeutic interventions were inadequately developed or trialled. The impact of trauma on the development of people's behaviour—the behavioural responses to their trauma—and mental illness was very poorly understood. Regrettably, during the 2007 review, the appalling conditions experienced by patients subject to long-term segregation had yet to gain public awareness, so this group of people was once again overlooked and harmful restrictive practices persisted unchecked.

We now possess a much clearer understanding about the nature of learning disability and autism. We therefore know that they cannot be cured my medication or short-term therapies, and we understand the harmful impact of restrictive practices.

We know that therapeutic community-based settings offer far better outcomes where they exist, enabling people to lead fulfilling and productive lives, and community care is more cost effective than prolonged in-patient stays. Although I acknowledge the introduction of the Mental Health Units (Use of Force) Act 2018, this legislation alone cannot address the deeper systemic issues that I have encountered in my work.

The Bill is an opportunity to add the necessary external scrutiny, and the stricter safeguards needed for long-term segregation. Without this, we risk becoming more of a record-keeping tool rather than a catalyst for real change, and the Bill relies heavily on the Mental Health Act code of practice, which is guidance and not law. In practice, we know that services do not always follow it. It is a large document; I reckon that most psychiatrists probably have not read it. It is huge already, and we are going to add more to it.

The amendments I propose directly address these shortcomings. Amendment 55 would require notification of long-term segregation within 72 hours, significantly strengthening oversight from the beginning of this restrictive practice. The Minister has told me that the CQC is already looking for the best way to introduce notification, and I hope she can say more about that. If she is not minded to place this in primary legislation, please can we have an estimate of when this restrictive practice notification will be brought into practice?

Amendment 3 mandates immediate investigation and safeguarding reviews when minimum standards—which would need to be outlined in the code of practice—are breached, or when long-term segregation becomes prolonged or repetitive. Given the profound deprivation of liberty involved, I believe these safeguards are essential. If the Minister accepts no other amendment, can she please accept Amendment 3? One might assume that safeguarding is already in place, but my review found that there were certain definitions of what safeguarding is, and being in long-term segregation for long periods of time was not one of them.

Amendment 56 mandates independent reviews that would provide external oversight within 28 days of a patient being placed in long-term segregation. Experience shows that independent evaluations, especially when they are multidisciplinary, are one of the most effective mechanisms for disrupting institutional inertia and preventing prolonged and unnecessary segregation.

The introduction of independently chaired care (education) and treatment reviews by the Government in 2019 has already demonstrated the value of external scrutiny, but these reviews are only funded until the end of the current year. They have exposed and addressed issues that have been tolerated or overlooked within the host hospital for years. The impact is clear: when independent professionals review cases, inappropriate long-term segregation is far more likely to be challenged and addressed. Given their success, I believe that independent reviews should be a statutory requirement. If the Minister is not minded to accept Amendment 56, could she reassure your Lordships' House that these independent reviews will continue to be funded for as long as long-term segregation exists?

We already have statutory oversight mechanisms for other hospital interventions. Medication and electroconvulsive therapy require review by second opinion doctors under the SOAD CQC system, yet long-term segregation—one of the most restrictive interventions possible—lacks equivalent scrutiny. Although tribunals oversee a patient's detention under the Act, they rarely examine specific treatment decisions, such as segregation. A formal independent review process could be built into existing legal and oversight structures, such as SOAD and the CQC, without requiring significant structural adjustments. Of course, there will be workforce shortages in the short term. However, the cost of independent reviews is undoubtedly lower than the financial and human rights costs of keeping patients in long-term segregation for years.

The Government plan to revise the code of practice. Amendment 52 seeks mandatory updates to the code of practice to provide clear guidance about the minimum standards needed for the accommodation used, and strict standards for the initiation, continuation and termination of the enforced social isolation that is euphemistically called "long-term segregation". Defining minimum standards is critical, given the appalling conditions in which some people are being detained. They are beyond your Lordships' imaginations, I assure you.

Amendment 57 mandates the appointment of an independent responsible officer by a hospital manager to proactively monitor and address the use of LTS, to ensure compliance with independent recommendations and to actively promote less restrictive alternatives. This too could be brought into practice very quickly, because the SOAD independent review and obligations on hospital managers are already in place.

I thank Mencap, the National Autistic Society, the Challenging Behaviour Foundation and VoiceAbility for their help drafting Amendments 4 and 5, which would require His Majesty's Government to publish a fully costed plan to provide sufficient community services. These services are needed to switch on the important learning disability and autism elements of the Bill. One of these amendments was originally tabled for Committee and has been revised in light of the Minister's response. Both would require the Government to consult with stakeholders to develop and publish a costed plan to ensure that integrated care boards and local authorities provide a sufficient number of the right services, as needed, to people with learning disabilities and autistic people.

4.15 pm

More than 2,000 people were still in in-patient units in February. Progress has been slow and key targets to get people out of hospital have been missed. With only a 29% decrease in the number of in-patients over the past 10 years and a wide variation in progress across the country, provisions in this Bill could make a real difference, ending the inappropriate detention of people with a learning disability and autistic people. However, campaigners and people with lived experience have serious concerns—I share them—that, without a plan to develop sufficient services, the pessimist's fears will be proved correct. The key point here is that people with a learning disability and autistic people will be treated the same way as any other citizens under the future Act; they will no longer be detained for treatment under Section 3 of the Mental Health Act when they do not also have a coexisting mental illness. That is right, is it not? However, this equalisation switches on only when His Majesty's Government judge that sufficient community support is in place.

I am not alone in being concerned that, without a comprehensive and fully resourced plan to build capacity in the community, this vital change will be delayed indefinitely and not implemented. That is the worry. I do not think that this amendment restricts the ability of His Majesty's Government to make progress in any way; all it is asking for is a plan. If the amendment is not considered necessary, what plans is the Minister putting in place to consult on and publish a robust replacement for the Building the Right Support action plan, which is now out of date and has failed to achieve the promised transformation?

Furthermore, my Amendment 5 would require the Government to publish a yearly report on progress being made against the targets in the plan. The pace of change would be stepped up by requiring the Government to lay the plan before Parliament within one year of the Bill being granted Royal Assent, and requiring the Secretary of State to review and revise the plan as needed, until the relevant changes in respect of Section 3 are switched on by the Secretary of State.

There is still time to consult with stakeholders, charities and, crucially, people with a learning disability and autistic people to ensure that a comprehensive and sufficient plan is drafted. All that could and should happen now; this is all needed to end the inappropriate detention of people with a learning disability and autistic people who do not have a coexisting serious mental illness. Amendment 68 simply requires that Section 3 comes into force after two years.

I urge the Minister to support these important amendments, to ensure that there are essential protections for people with a learning disability and autism, and to redirect resources towards humane, community-based care.

Baroness Meacher (CB): My Lords, I rise to speak very briefly to the issue of people with autism and learning disabilities being detained in hospital. Clause 3(4) amends the Mental Health Act to prevent people being detained under Section 3—in other words, for six months—if they have autism or learning disabilities. Should this not also be preventing detention of people with autism and learning disabilities at all, and certainly for 28 days, for example? Limiting this restriction to Section 3 is unhelpful for people suffering with these disabilities. This is a small point to raise with the Minister.

Lord Crisp (CB): My Lords, I have added my name to one of my noble friend Lady Hollins's amendments on community services and to four of those on long-term seclusion. I will speak very briefly to each topic.

On community services—I also support my noble friend Lord Adebowale's amendment on this issue—I understand the Government's concerns about timing and, presumably, costs, but I believe nevertheless that the Bill should provide legislative pressure to deliver community services for autistic people and people with learning disabilities. There is little point in using the Bill to set out a new legislative framework for this group if this does not include some notion of a plan or timetable, and it is highly likely that the service will simply fall back into the established patterns of non-therapeutic containment if this is not included.

I fully endorse the point made by the noble Baroness, Lady Browning, about the Autism Act. As one of the witnesses to the autism committee recently said, this is a pretty good law, but where is the action? Where is the implementation? That is the point, and we need some reassurance on a plan being forthcoming within a reasonable timeframe.

On long-term seclusion, I suspect that most members of the public would be surprised to know that what amounts to, in some cases, solitary confinement—I use that pejorative phrase deliberately—is used for such long periods in our institutions. We are talking about 15 days at a time and potentially more than that, over the course of a month, if there is a break between the 15 days and the next 14 days, for example. We should be particularly concerned about what happens out of sight in these institutions, where what should be a very rare occurrence at best can become all too easily routine.

These amendments open this long-term seclusion to greater scrutiny and control. They may not prevent it happening altogether, but they will help to make it a rarer occurrence. I refer in particular to two amendments, neither of which I have my name against—that is my mistake rather than anything else. Amendments 3 and 53 both refer to the code of practice and require that if people are kept in long-term seclusion for 15 days,

[Lord Crisp]
or indeed the majority of 30 days, there will be clear monitoring and subsequent active intervention to take account of that. They are entirely reasonable amendments and do not raise funding, timing or any other issues. They are about ensuring proper scrutiny of what is happening to vulnerable people in some of our institutions.

In saying that, I am reminded of reading the report from Blooming Change, a young people's organisation. I quoted the report at Second Reading, and it describes problems with safety and quality. There are descriptions of being injured during restraint, being drugged and restrained, and being scared all the time. It includes the terribly sad quotation:

"'hospital makes you worse'… going into hospital with one problem and then leaving with trauma, new behaviours, new diagnoses, assaults, PTSD – it's awful."

We ought to be able to ensure that the code of practice for long-term seclusion is adhered to and that where it is not, it is properly investigated.

Lord Scriven (LD): My Lords, I rise to speak to a number of amendments that I have added my name to, particularly those in the name of the noble Baroness, Lady Hollins. In Committee, the whole issue of people with learning disabilities and autism caused a number of concerns. I note that the Minister has gone some way towards dealing with some of those concerns, and it is a tribute to her listening and enaction skills that progress has been made.

I think it would be fair to say that there are still some concerns on Benches across the House about potential unintended consequences for people with learning disabilities and autism if the Bill goes through in its present form. In some areas, I would describe the statement from the Minister as, "It'll be all right on the night"—but we know that, sometimes, it is not all right on the night, and things will happen.

The noble Baroness, Lady Hollins, puts forward quite an important base for long-term segregation. There is no evidence that it has a long-term therapeutic benefit for people who have learning disabilities and autism, and so the provision for it still being there, without laser-focused monitoring and intervention, is a weakness. The Minister really has to convince the House that the Government have a plan to deal with this.

The worry about having too much faith in the code of practice, as we found out in Committee, is that simple words such as "should" and "must" have very different meanings for whether or not there is a statutory obligation on an organisation. It would be interesting to hear the Minister's view on the focus in the code of practice and on strengthening the words used.

Amendment 4, to which I have added my name, is something that the House should focus on and understand. Throughout the history of implementation of improvements in mental health and other areas where community carers come in, they have always fallen down on implementation, due to a lack of either funding or resources. Amendment 4 focuses on implementation. As the noble Lord, Lord Crisp, has just said, in the Autism Act 2009 Committee, we heard from two witnesses who said there is a plethora of policy but it is always the plan on implementation that fails. The amendment in the name of the noble Baroness, Lady Hollins, focuses on that implementation and asks that the Government have a real plan to do that.

It was worrying as we went through Committee, particularly when issues were raised about the numbers in the impact assessment, that the Minister pointed out that they are indicative. The amendment in the name of the noble Baroness, Lady Hollins, is required because, if we take a look at the trend of the percentage of total healthcare spend that has been allocated to mental health, including the Government's announcement last week, we find that there have now been two years in which the total spend will be reduced. That means that some of the good ideas that the Government have mentioned with regard to the implementation of this Bill and community services are potentially at risk.

I do not know whether the noble Baroness will press her amendment, but, if she does, she will have the support of these Benches. We think this is vital, and we are not quite convinced, unless the Minister says something to that effect from the Dispatch Box, that that crack—that real weakness—has been dealt with.

Lord Kamall (Con): My Lords, before I begin my remarks, I express my gratitude to the Minister and to officials for their engagement with not only me but other noble Lords between Committee and now. I know I am not alone in appreciating the amount of time and work that the Minister and officials have put into meeting with us, addressing our concerns, and even having follow-up meetings; that was very much appreciated.

I will speak to Amendment 1, in the name of my noble friend Lady Browning, and briefly address some of the other amendments in this group. We supported my noble friend Lady Browning's intention to retable this amendment, which seeks to address the loophole which could lead to the use of the Mental Capacity Act to detain patients with learning disabilities but without a recurring condition.

As noble Lords have acknowledged, both in Committee and today, once the legal basis for detention under the Mental Health Act is removed for these patients, there was always a profound risk of them falling under the deprivation of liberty safeguards. Nobody wishes to see extra safeguards introduced into the Mental Health Act for that to be simply replaced with detention by another Act. My noble friend said today that she has received further assurances from the Minister—we are grateful for those assurances—and that she is no longer minded to test the opinion of the House. Had she been minded to test the opinion of the House, she would have had our full support, but I am grateful for the assurances that the Minister has given to my noble friend.

4.30 pm

My noble friend Lord Howe has added his name to Amendment 6, in the name of the noble Lord, Lord Adebowale. Noble Lords around the House have raised concerns about the provision of community services. In Committee, my noble friend and I brought our own amendments to that effect. We particularly want to see more community services delivered in partnership with local charities, civil society organisations

and other community organisations. It is right that noble Lords continue to push the Government to ensure sufficient community mental health services.

The noble Baroness, Lady Hollins, has tabled her own amendment that addresses the provision of community services for those with learning disabilities and autism. As with her other amendments, we are incredibly sympathetic to its intentions. I recall that one of my first debates when I was a Minister was addressing the issue of long-term detention. I know the Minister will remember that debate, when we heard horrific examples of people being detained for many years. There was a story only a few weeks ago of someone who had been detained for about 40 years. Although we are sympathetic, we feel that some of the amendments are, I fear, a bit too prescriptive. We will not be supporting them if they are called to a vote but neither will we vote against them.

Amendment 56, from the noble Baroness, Lady Hollins, seems sensible to us. The Government have some explaining to do as to how they are planning to ensure greater safeguards for those subject to long-term segregation. If the noble Baroness, Lady Hollins, is not satisfied by the Minister's response, when Amendment 56 is called we may be minded to support her. With that, we look forward to the Minister's comments.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron) (Lab): My Lords, I start by saying how grateful I am to noble Lords for their amendments and for the contributions they have made today. I express my thanks at the beginning of this first day of Report for the generosity of time and expertise of noble Lords from across the House—I have greatly appreciated it.

I turn now to the specifics. As the noble Baroness, Lady Browning, is aware, I agree with the principle behind Amendment 1, but there are limited circumstances where it might be appropriate to use the Mental Capacity Act to ensure that patients get the right support. I am glad that the noble Baroness welcomed my letter and that it was helpful. For people who have recently received treatment for a psychiatric disorder under the Mental Health Act, the Mental Capacity Act may be required to continue to support the individual in hospital in the short term while a community-based placement is being arranged.

Monitoring our reforms will indeed be crucial, as many noble Lords have said today. The NHS England assuring transformation dataset collects data on the number of people with a learning disability and autistic people detained in mental health in-patient settings under the Mental Capacity Act. As the noble Baroness herself referred to, the current number is fewer than five; nevertheless, it is, as she said, important.

I reiterate from this Dispatch Box the commitment that I made in the letter. Ahead of reforms to Part II, Section 3, we commit to monitoring the number of people with a learning disability and autistic people who are detained under the Mental Capacity Act, and will include a line on this in standard publications. Should we see an increase in this number following the reforms and discover that the Mental Capacity Act is being used inappropriately, we will ensure that appropriate action is taken.

I thank the noble Baroness, Lady Hollins, for her work on long-term segregation. Many noble Lords have raised facilities and community resourcing. I will address this, and the concerns about commitments in this Act being applied, when I turn to Amendments 4 to 6. On Amendments 3 and 55, there is a requirement in the Mental Health Units (Use of Force) Act 2018 to publish instances of isolation in mental health units. We have consulted on making this and other restrictive practices notifiable to the CQC within 72 hours for all patients in mental health hospitals, allowing the regulator to take prompt appropriate action.

Practical concerns were raised through the consultation that was held, which we are legally required to consider. I hope noble Lords will understand that because of this I am unable to commit to mandating reporting at this stage or to give a timeline, which I was asked for. However, noble Lords can be well assured that I more than understand the urgency. My officials have written to the CQC to commission it to develop a proportionate reporting mechanism, as has been referred to, and these changes can be made in regulations.

The noble Baroness, Lady Hollins, asked about restricted practice notification. Because this is to be made in regulations, clearly that will be, as usual, when parliamentary time allows. Every NHS-funded organisation is responsible for ensuring that safeguarding duties are applied. The code of practice requires the local safeguarding team to be made aware of any patient in long-term segregation.

On Amendment 56, the code of practice already sets out that a patient's situation should be reviewed by a clinician at least once every 24 hours and at least weekly by the multidisciplinary team. The CQC has received funding to continue the programme of independent care or care (education) and treatment reviews for two years, and reviews recommenced in May 2024. We need to consider the programme's impacts and the outcome of the spending review before future decisions are taken. Doing this outside legislation allows for flexibility. The independent care (education) and treatment reviews model has evolved as we have learned about what works best. We want to be able to continue to deliver the right approach. On Amendment 52, we will review the guidance in the code of practice on the use of long-term segregation, drawing on available evidence. This does not require primary legislation.

To my point on drawing on available evidence, we will indeed use the report of the noble Baroness, Lady Hollins, alongside other evidence, to consider changes that need to be made to the Mental Health Act code of practice, which we will review as part of the implementation of the Mental Health Act reforms after Royal Assent. We hope that this, alongside other actions that we are taking—including the continuation of ICETRs and NHS England's quality transformation programme—will make progress to reduce long-term segregation.

There were points raised about Amendment 53, which we will return to in the debate on the fifth group. On Amendment 57, it is our belief that this duplicates existing requirements. The Mental Health Units (Use of Force) Act 2018, once fully implemented,

[Baroness Merron]
will require mental health units to have a responsible person who must keep a record of any use of force by staff.

I absolutely understand the concerns that many noble Lords have raised about community support. This has driven Amendments 4 to 6. I also recognise the need for accountability and scrutiny of these reforms—a point that has been made several times.

I say to the noble Lord, Lord Scriven, that I hope I am about to do better by him than, "It will be all right on the night", but he will be able to judge that. I am pleased with what I can commit, which is that within a year of Royal Assent, and each year subsequently, we will lay a Written Ministerial Statement in both Houses. This will include setting out details of the work that has been done over the preceding 12 months to implement this legislation and plans for how we will implement future reforms. It will include progress on the learning disability and autism reforms and plans for community provision.

Regarding Amendment 68 and the remarks by the noble Lord, Lord Crisp, we have heard concerns about possible unintended consequences, such as the potential criminalisation of individuals or detention via other legislative routes. To avoid such scenarios, we will commence changes to Section 3 only once there are strong community services in place and it is safe to do so, because flexibility is essential.

I hope that these commitments will satisfy noble Lords not to press their amendments.

Baroness Hollins (CB): Will parliamentarians be able to question and amend the plan that will be laid before Parliament every year? The lack of ability to influence that process and that plan concerns noble Lords.

Baroness Merron (Lab): I have heard from noble Lords that they are concerned with having transparency, holding the Government to account and being updated on the situation. I absolutely agree with all those points, which is why I am pleased to make that commitment. Parliament has a number of routes available to it to hold the Government to account. I have just outlined the manner in which we will be transparent and the way the Government will be held to account by having to do that. As always, parliamentarians have the ability to scrutinise in many ways.

Baroness Browning (Con): My Lords, we have heard a lot of very salient and not just helpful but wise words in the debate on this group of amendments. I thank the Minister for standing at the Dispatch Box and making commitments that are now on the record with this Bill. When people ask what Parliament's intention was, she has left us in no doubt on some important points, particularly on my amendment concerning the need to monitor the use of the Mental Capacity Act in respect of autistic people and people with learning disabilities. I am grateful that she has done that and for a similar commitment I think I heard her make around some of the concerns that the noble Baroness, Lady Hollins, had.

Finally, the Minister has not given us exact dates as to when implementation will take place. We imagine it may be staged—not all in one go—but before the end of this year, the committee upstairs will report on the post-legislative scrutiny of the Autism Act. That will cover a wide range of issues, particularly services to people with autism. I hope that, perhaps in her deliberations on this Bill, when she sees that report—I cannot predict what the outcome of that will be—she will take those into account as well. For certain, services provided under the Autism Act, if they are provided in a timely way, will reduce the number of services that will be needed under the Mental Health Act. It is not rocket science; it is pretty basic that if you provide those services, that downward spiral in mental health is reduced. With that, I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Clause 4: People with autism or learning disability

Amendment 2

Moved by ***Baroness Butler-Sloss***

2: Clause 4, page 7, line 32, at end insert—

"(v) a person or persons with parental responsibility who have not received a court order restricting the exercise of their parental responsibility."

Baroness Butler-Sloss (CB): My Lords, I have three amendments in this group—Amendments 2, 25 and 27. They all relate to the relationship between parents, special guardians and others with parental responsibility, and the Bill.

I must first say that I am extremely grateful to the Minister and her team for having been allowed to try these points out on her on several occasions. I am afraid that I did not make a great deal of progress, but I hope that I made just a little. I do not propose to ask for the view of the House on any of these three amendments, but I hope that they will go into the code of conduct.

4.45 pm

Amendment 2 relates to the preparation of reports. Those with parental responsibility are not currently referred to. The whole of the Bill—very oddly, to me—has little relationship with the Children Act. Since those aged under 18 are children, particularly those aged under 16, what concerns me about the Bill is that it does not seem to recognise that parents and other people with parental responsibility ought to have a say—absolutely not a veto, but at least to be consulted. Except for one very minor place in the Bill, they are not consulted at all.

My second amendment is on the ability to apply to the county court such that a nominated person should not be allowed to take that job and that their name should be terminated. The Bill currently does not include anyone with parental responsibility for a child aged under 16, who can nominate somebody without consulting the parents and without the parents currently having any opportunity under the Bill to say that that is not a suitable person.

Let me take an example that would not be all that unusual of a child aged under 16—14 or 15 years old—who is quite bright and already has a boyfriend. There is nothing unusual about that. They might already have a very unsuitable boyfriend and, regretfully, there is nothing unusual about that. Other people can go to the county court and say, "That boyfriend is entirely unsuitable and certainly should not be the nominated person", but, under the Bill, the parents with whom the child has been living do not have any opportunity to be consulted or to go to the county court to ask it to rethink this nominated person.

Amendment 27 addresses the formalities for the appointment of a nominated person. Again, a competent child aged under 16 may perfectly well appoint his or her own nominated person without any reference to their parents. Under the Bill, there is a witness, who has to consult various people among whom—there is quite a long list—are not the parents, the special guardian or anybody with parental responsibility. Quite simply, the Children Act has been completely ignored.

However, I have had very interesting and helpful discussions with the Minister, who is to be congratulated on being prepared to put up with me going to talk to her extremely late in the evening. I hope that she will say in her reply that all this will be in the code of practice. If we can include parents, special guardians and other people with parental responsibility, where a court has not in fact said that their parental responsibility should either be terminated or reduced, and if ordinary decent parents can at least be referred to in the code of practice and expected to play a part, however small—not a veto, just a consultation part—that would be second best, but it would be better than nothing.

The other amendment I want to refer to is Amendment 34, which puts into effect that which I have been asking for and is being put forward by the noble Baroness, Lady Berridge. I very much support her amendment. I beg to move.

Baroness Berridge (Con): My Lords, I shall speak to Amendment 34; I thank the noble Baroness, Lady Tyler, for adding her name to it. I am grateful too to the Minister for beginning, by way of the government amendments, to ensure that the Mental Health Bill does not conflict with orders of the family court under the Children Act.

Amendment 34 would ensure that the AMHP—approved mental health professional—appointing the nominated person for a child who lacks competence must appoint either the special guardian, when the family court has ordered one, or the parent with whom the child lives under a child arrangements order. His Majesty's Government's amendment reflects the current position under Section 37 of the Mental Health Act, and this amendment merely reflects the current position under Section 38. Under the Bill, however, the nearest relative becomes the nominated person and moves from a "must" in the Mental Health Act to a "should" in a code of practice.

According to the Government's policy paper, His Majesty's Government wished to give the AMHP the discretion to appoint someone other than that special guardian or the parent with whom the court has ordered that the child resides. Both those court orders affect parental responsibility. A special guardian takes all effective day-to-day decisions for the child and, according to the Children Act 1989, parents are left only with consent to a change of name or if the child is to leave the jurisdiction.

A kinship carer or foster carer is given parental responsibility by way of a court order after a report that has to be produced by the local authority to the court. Under a child arrangements order, the matter of who the child lives with or sees is determined, again, by a court order. A matter that is usually part of parental responsibility decided between the parents is now the subject of a court order. Breaching that order is, in fact, contempt of court—or a breach of a court order, as is normally said.

Many of these admissions of sick children who have no capacity are in the evenings or at weekends. That is what I was informed last Thursday by Dominic Marley of the AMHP Leads Network, whose clear view is that it does not want to be foisted with the discretion that His Majesty's Government offer them. Why? It is because, quite simply, AMHPs are not equipped, unlike the family courts, to assess that there is now no risk of harm to a child, or to appoint someone other than the special guardian or the parent with whom the child resides.

How can AMHPs assess, at 10 pm on a Saturday night, that the daily life of a child is no longer what was outlined in the special guardianship order, or if the child now lives with that parent without a problem, even though that parent may have a history of not being able to care for them due to illness, or a history of violence, but has now recovered or reformed sufficiently? How can AMHPs assess that the parent who was ordered not to have contact after a week-long trial of the evidence in the family court is, in fact, safe to have contact with the child as the nominated person? AMHPs are simply not equipped to delve into complex family issues that have already been determined by the family court—nor, when they are trying to do a mental health assessment of a sick child, do they want to be distracted by this.

The remedy, as the noble and learned Baroness, Lady Butler-Sloss, outlined, is to enable the reformed parent in either of those cases to go to the county court under the nominated persons process, which, indeed, often hears cases within 24 hours. There is, of course, also the remedy to go back to the family court, but that would take longer. It is for that court to assess, we hope with a family judge, what the position is and whether that parent is now safe to be involved in the child's life as the nominated person. It is unfair to put that responsibility on AMHPs, who see only a small number of Children Act cases each year. Also, as these cases are not straightforward—by definition, they have been subject to an order in the family court—AMHPs would almost certainly need His Majesty's Government to provide out-of-hours specialist legal advice across England and Wales to help them do this. That matter would, obviously, be open to litigation.

AMHPs and the staff of a unit should not have this responsibility or discretion. What if a father who has a no contact order is given access as the nominated person and harms the child? Even if that does not

[Baroness Berridge]
happen, I cannot help wondering, can the mother go to the family court and say that the dad is in breach of the no contact order or in contempt of court by seeing the child as the nominated person? And would the dad defend that breach and say, "I need to call the AMHP to the family court"? This seems to be getting rather expensive and complicated. Family court orders should be respected, so who the AMHP must appoint as the nominated person should again be on the face of the Bill. Most importantly, this would eradicate the risk of harm to a child from a parent, who has been found by a court to be a risk to their child, getting contact with them, or getting access as the nominated person until another court determines otherwise. Court orders are amended by court orders, not AMHPs.

After eight years of looking at the Mental Health Act to reform it, we are now at Report stage and there are still significant conflicts between this Bill and the Children Act. I am left wondering why. Sadly, despite the considerable engagement that other noble Lords have mentioned by the Minister, which I know is appreciated, as of last Thursday, His Majesty's Government have not met with the lead AMHP network that I have outlined, which represents over 90% of local authorities in England and Wales and has been in existence for over 20 years. The network is not aware of any other professional network being in existence. It was promised by the last Government that, before a Bill was produced to Parliament, it would be met with. As of last Thursday, His Majesty's Government have also not consulted with the British Association of Social Workers, which has a special interest group of AMHPs. Why not? Will the Minister please outline precisely whether any AMHPs have been met with and, if so, tell us who are they are and make them known? The network I have spoken to is very concerned about this discretion.

The Minister has immunity while being a servant of the Crown; AMHPs and the staff of a secure mental health unit do not. All the AMHPs are asking for is what is indeed reflected in Whitehall. The DHSE has responsibility for the Mental Health Act and DfE for the Children Act. This is not their expertise. I do hope I will not be attaching this *Hansard* to a letter to a coroner, a CQC inquiry or any other inquiry if, God forbid, a child is harmed or killed in a secure unit by a parent.

Governing is about deciding. Without Amendment 34, His Majesty's Government have, in my view, decided to take an unnecessary risk with the safety of some of our sickest children. As noble Lords may be aware from how I have outlined this speech, I intend to divide the House if necessary—but I hope the Minister will concede the point.

Lord Meston (CB): My Lords, I would like to support both the amendments of the noble and learned Baroness, Lady Butler-Sloss, and the amendment just spoken to by the noble Baroness, Lady Berridge. It seems to me that, in the potentially complex and fluctuating family situations with which mental health professionals may find themselves having to deal, it is absolutely fundamental that they identify and consult those who have parental responsibility. It would be quite wrong, even in a hasty or urgent situation, for such people to be marginalised.

So far as the amendment from the noble Baroness, Lady Berridge, is concerned, I likewise entirely agree that the practical realities of operative family court orders, which may or may not be relevant, will certainly need to be understood and properly looked at before any urgent decisions are made. They will also need to be fully considered later when more measured decisions have to be made. For that reason, I would certainly wish to support her amendment.

Baroness Tyler of Enfield (LD): My Lords, I shall comment on this important group of amendments. I have real sympathy with the amendments that have been tabled. I join others in thanking the Minister for the helpful and constructive conversations that we have had since Committee in a number of areas, including this one.

5 pm

I welcome the Minister's amendment, which recognises that approved mental health practitioners must appoint local authorities as the nominated person for children and young people subject to care orders. That is really important. I was also pleased to add my name to Amendment 34 in the name of the noble Baroness, Lady Berridge, because that would ensure that the Mental Health Bill aligned fully with the Children Act, particularly the various orders in relation to parental responsibility that are outlined in that Act.

Those two things are important and, I hope, would bring much-needed clarity and consistency to the difficult job that approved mental health professionals do. If they do not have that degree of consistency, they could potentially leave themselves vulnerable to legal challenge. These amendments, taken together, would ensure that the Children Act was no longer, as the noble and learned Baroness, Lady Butler-Sloss, said, ignored and that, through the scrutiny of this Bill, we had ensured that these two very important Acts were aligned.

Earl Howe (Con): My Lords, this is Report and I do not propose to do more than underscore all that is been said by noble Lords who have spoken, particularly my noble friend Lady Berridge. Approved mental health professionals carry with them a huge responsibility for the well-being of those whose interests they are called upon to protect. When a child or young person suffers a mental health crisis, it is the job of the AMHP to make the right assessments, take the right decisions and follow the right procedures under the law to ensure that the young person is looked after appropriately and swiftly. To do that, he or she needs a clear set of ground rules to follow.

We need to imagine a situation, such as the one posited by my noble friend, in which a child's mental and emotional condition is such that they lack decision-making competence. An AMHP is then called in. In that situation, when it comes to appointing a nominated person for the child, the scope for confusion and indeed delay is enormous. Who should be appointed? Is it the mother or the father, or is there someone else who should take precedence?

The Minister has acknowledged through the government amendments before us that, when there is a care order for the child, the AMHP should have no choice but to appoint the local authority as the nominated person for the child. That is a welcome step forward but, as my noble friend has rightly said, what if there is a special guardianship order or child arrangement order issued by the court under the terms of the Children Act? In those circumstances, too, the AMHP should be relieved of the obligation of making a decision that, if it is the wrong one, could leave them open to legal challenge. I very much hope the Minister will be receptive to the powerful arguments that my noble friend and the noble and learned Baroness, Lady Butler-Sloss, have advanced on these significant issues.

Baroness Merron (Lab): My Lords, I thank all noble Lords for their contributions in this important area, and I thank the noble and learned Baroness, Lady Butler-Sloss, for Amendment 2.

On that point, I can say that a copy of the report made following a care and treatment review must be sent to those who have a legal duty to have regard to the review recommendations, so that they are implemented appropriately. We agree that parents play an important role. However, it may not be appropriate for the report to be sent to parents in every case: for example, where safeguarding concerns have been raised. Inappropriate sharing of information could result in the patient withdrawing their consent to the review. So we will provide statutory guidance on the role of the parent to assist the responsible commissioner in considering who to involve in care and treatment reviews.

On Amendment 25, also tabled by the noble and learned Baroness, Lady Butler-Sloss, the Bill already allows anyone involved in the patient's care or welfare, which includes parents, to apply to the county court to terminate the appointment of a nominated person. I can assure the noble and learned Baroness that we will make this clear in the code of practice and the Explanatory Notes for the Bill, as she has raised an important point.

To address Amendment 27, we are concerned that making it a requirement for parents always to be consulted when a nominated person is chosen could put undue pressure on a child to choose a parent. However, we agree that the witness should consider the views of parents and others who may have insight into the suitability of a nomination. I can tell the House that we will therefore set out in the statutory code of practice how the views of the family and others should be fed into the witnessing process.

I have also heard the concern of the noble Baroness, Lady Berridge, about the nominated person regarding children who lack competence. In response to this, as she acknowledged, I have tabled Amendments 29 to 33 to make it clear who an approved mental health professional must appoint in certain circumstances. For an over-18 lacking capacity, an approved mental health professional must appoint a competent lasting power of attorney or Court of Protection deputy, if they have one. For all under-18s lacking capacity or competence, where there is a care order, they must appoint a local authority which has parental responsibility for them or, if relevant, a competent Court of Protection deputy. Where there is no care order, the approved mental health professional can appoint a person who does not have parental responsibility for 16 and 17 year-olds. This allows for suitable alternative arrangements, for example, informal kinship arrangements for young people who live independently. I hope that this reassurance and commitment on my behalf provides the further clarity for which the noble Baroness has been advocating.

Finally, in response to Amendment 34, we agree that in the vast majority of cases we would expect a parent, or whoever has parental responsibility, to be appointed. This would include consideration of special guardians and child arrangement orders. As I have set out before, we do not agree that a person with residual parental responsibility should always be blocked from being a nominated person. A child arrangement order or special guardianship may be in place for reasons other than the parent being a risk to the child. For example, the parent might struggle with their own health issues but could still be an effective nominated person.

The situation is different in the case of a care order because the local authority is being given lead parental responsibility. We have engaged with the Children's Commissioner on this point. As I believe the noble Baroness may be aware, I recently met the Children's Commissioner on a range of issues, including discussions about the Mental Health Act.

If there are no relevant people, approved mental health professionals must follow the patient's past and present wishes and feelings when deciding who to appoint. We do not believe that the eldest person should be given preference, as this represents an outdated assignment of responsibility. I assure the noble Baroness, Lady Berridge, that I have been advised that my officials met the chair—but I understand that the term is lead—of the AMHP Leads Network last November.

I can make a further commitment, which I hope will be helpful to your Lordships' House. I am committing to establishing an expert taskforce to support the development of the statutory code of practice to provide clear guidance for professionals involved in the nominated person appointment process for children and young people. Views will be very much welcomed on who should be part of this; I have already invited the noble Baroness, Lady Berridge, and the noble and learned Baroness, Lady Butler-Sloss, to make suggestions about that. With these reasons, I hope that noble Lords can support our amendments and will not press their amendments.

Baroness Berridge (Con): Before the Minister sits down, the information I have is that Dominic Marley of the AMHP Leads Network had not seen a draft of the Bill that was to go before Parliament. Can the Minister confirm that? The Minister has outlined that there can be an assessment of ill-health already before the courts. Is she confident in legislating when a group of professionals are saying that they are not competent to assess the illness or otherwise of that parent and that the matter, already determined by a court, needs to go back to a court to be re-evaluated? They say that they are not competent to do what you are asking of them.

Baroness Merron (Lab): I note what the noble Baroness has said. We have discussed these issues a number of times in the Chamber and outside. On her second point, the situation is as I have outlined, and I do not feel I should go further today. These are the points I wish to bring before your Lordships' House. I am happy to take up the points she raised separately. However, on her point about the exact details of the meeting, to be quite honest I cannot give that level of detail. I am very happy to find out more from my officials. The noble Baroness originally asked whether there had been a meeting, and the answer is yes.

Baroness Buscombe (Con): My Lords, the Minister will know that I pledged at the very beginning, before the Bill came to this House, that I would do all I could to help its passage. I made that pledge to the Secretary of State. Given the continued conflict, as we see it, with the Children Act, would the Minister be prepared between now and Third Reading—rather than us dividing the House on this later—to have a little more discussion on this issue? We discussed it at great length during our inquiry into the draft Mental Health Bill. To us, it is a significant point that does not appear to have been properly resolved. In wanting to support the Government in making sure, as my noble friend has said, that they are not opening themselves to legal challenge, and to ensure a safe passage of the Bill, can I put that possibility to the Minister?

Baroness Merron (Lab): I am grateful to the noble Baroness, not least because she has also given me a bit of time to add to my earlier answer to the noble Baroness, Lady Berridge, about the meeting with the lead of the AMHP Leads Network last November. That meeting took place after the Bill was published.

On the point the noble Baroness raised, whether the House will be divided will be a matter for the noble Baroness, Lady Berridge, and others to decide, but I am always happy to have discussions. If the noble Baroness wishes to do that, I will be very pleased to, as always.

Baroness Butler-Sloss (CB): I do not think I need to say anything else. I am relieved to hear from the Minister that it will be expressly in the code of practice. I am also grateful for the idea that I can put forward some suggestions, which would be very helpful. I do not propose to take any further steps on my three amendments, and I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3 not moved.

Amendment 4

Tabled by ***Baroness Hollins***

4: Clause 4, page 10, line 5, at end insert—

"125FA Community Services Sufficiency Plan: commissioning of services for autistic people and people with a learning disability

(1) The Secretary of State must prepare and lay before Parliament a document setting out a plan for resourcing and commissioning sufficient community services for autistic people and people with a learning disability to ensure the operability of provisions in the Mental Health Act 2025.

(2) The document shall be referred to as the "Community Services Sufficiency Plan".

(3) The Community Services Sufficiency Plan must be published within one year of the day on which the Mental Health Act 2025 is passed.

(4) The Community Services Sufficiency Plan must include—

(a) a definition of "sufficient community services" in relation to autistic people and people with a learning disability, including how sufficient community services will be assessed regarding the operability of provisions in the Mental Health Act 2025;

(b) the actions that the Secretary of State will take to ensure community services are available to meet demand for autistic people and people with a learning disability after the end of the 28-day detention period under section 2(4) of this Act (admission for assessment);

(c) the actions that the Secretary of State will take to ensure that sufficient community services for autistic people and people with a learning disability are available to prevent detention under section 3 of this Act (admission for treatment);

(d) plans to allocate appropriate resource to ensure operability of services, including, but not limited to, financial resource;

(e) plans to ensure that responsible bodies and individuals receive the necessary training in autism and learning disability to carry out support, diagnosis, and treatment;

(f) plans for data collection to support the commissioning of sufficient services for autistic people and people with a learning disability;

(g) targets and milestones relevant to—

(i) the number of autistic people and people with a learning disability who are detained under this Act, and

(ii) the development of sufficient community services for autistic people and people with a learning disability,

(h) any other information the Secretary of State deems relevant.

(5) For a period of 10 years beginning on the day on which the Community Services Sufficiency Plan is first published, the Secretary of State—

(a) must keep the plan under review, and

(b) may revise it.

(6) If the Secretary of State revises the Community Services Sufficiency Plan, the Secretary of State must publish it as revised."

Baroness Hollins (CB): My Lords, I am grateful for the promises made by the Minister, but they are not wholly reassuring and I had intended to test the opinion of the House. However, I would like to put on record the lack of support from the Opposition Benches, even though I have the support of many Members of the Cross-Bench group and noble Lords on the Liberal Democrat Benches. This lack of support is surprising, given the failure of their own plan, *Building the Right Support*. I fear it would be wasting the time of your Lordships' House for me to proceed, so, instead, I will keep an eagle eye on the progress of the promised plan and the resources allocated to make it achievable, as well as the degree of challenge and amendment that will be facilitated. I will not move Amendment 4.

Amendment 4 not moved.

Amendments 5 and 6 not moved.

5.15 pm

Clause 5: Grounds for detention

Amendment 7

Moved by ***Lord Kamall***

7: Clause 5, page 11, line 22, after "detained" insert "by a constable or other authorised person"

Member's explanatory statement

This amendment and others in the name of Lord Kamall seek to introduce a new category of "authorised person" who can carry out detentions under the 1983 Act to offer better inter-agency response. The proposed amendments would remove the need for the presence of police at mental health incidents in the absence of any risk.

Lord Kamall (Con): My Lords, these amendments in my name and that of my noble friend Lord Howe are really amendments from my noble friend Lady May, who unfortunately cannot be in her place today. As my noble friend told the House in Committee, when she was Home Secretary, a recurring concern raised by police officers was being called out to situations where they were expected to determine whether someone was at the point of crisis and what should happen to that individual. As we know, that usually meant taking the individual to a police cell as a place of safety—an issue that is addressed in other parts of the Bill. But police officers continue to be concerned that they are asked to deal with something for which they have no, or insufficient, training or knowledge.

As my noble friend reminded the House, a police presence is also often not good for the individual, as not only is that individual not being given the healthcare support they need, but the presence of an officer in uniform coming to deal with them could exacerbate their mental health situation. Even if the police officer is able to get somebody to a hospital, they might still be required to sit with an individual to make sure they do not harm themselves or others. My noble friend Lady May cited the Metropolitan Police's evidence to the Joint Committee on the draft Bill, where it gave an example of a patient in A&E who was required to be guarded by eight Metropolitan Police officers over 29 hours to prevent them being a high-risk missing person.

In its letter to the current Secretary of State, the National Police Chiefs' Council was concerned that the law as it currently stands

"arguably views mental health through the lens of crime and policing related risk, which raises … issues including disproportionality in the criminal justice system, discrimination, adverse outcomes for people suffering with poor mental health as well as increasing stigma attached to mental health".

I make it clear that, although this amendment removes the statutory demand for the police to be the primary responders to incidents of mental health where there is an immediate risk to life or serious injury, the police will still have a role to play.

The amendments specify that the authorised person attending an individual should be

"trained and equipped to carry out detentions"

and should not be

"put at unnecessary risk by carrying out those functions".

This is in line with the College of Policing's 2019 mental health snapshot, which found that almost 95% of calls that police attend that are flagged as a mental health response do not require a police response.

The Minister will be aware that, in the joint Home Office and Department of Health review and survey of Sections 135 and 136 powers, 68% of respondents agreed that all or part of Sections 135 and 136 powers should be extended so that healthcare professionals could use them, provided that they were not putting themselves at risk. Paramedics in particular supported a change, with more than 90% agreeing and more than 60% strongly agreeing.

However, this is not just about the interests of the police and healthcare professionals. More importantly, we need to focus on the individual at the point of mental health crisis. They deserve the right response, the right care and the right person.

I note that the Minister, in our conversations—I appreciate her giving forewarning of this—discussed how the amendment as it stands appears to give the police more powers. I discussed that with my noble friend Lady May before I came to the Chamber, and she was surprised at this and said that it was somewhat disappointing, given the constructive meetings that the Minister and my noble friend have had, and given that the Metropolitan Police said that they were supportive of this move when my noble friend met representatives last year.

There is clearly a difference of opinion here, and we appreciate that we need to find a way forward. I know that my noble friend Lady May is open to discussions with the Minister to ensure that the principle behind these amendments is met. Could the Minister give a guarantee to meet my noble friend and that, following these discussions back and forth, she will be able to bring back an amendment at Third Reading?

The fundamental principle remains unchanged: the role of police in detentions under the Mental Health Act must be reduced, and it must be reduced for the patients' and the workers' benefit. If the Government can accept the principle but not necessarily the precise wording, I hope that the Minister will be able to give the assurances that I and my noble friend Lady May have asked for. I am afraid that, if the Minister cannot give the assurance that she can bring forward an amendment at Third Reading, having had discussions with my noble friend Lady May, we will have to test the opinion of the House. I hope that the Minister can help to find a constructive way forward with my noble friend.

Lord Davies of Brixton (Lab): I am extremely pleased that the noble Lord, Lord Kamall, has moved his amendment for the Opposition. I will not be voting for it, but I am pleased that it has been moved because in Committee I moved amendments along the same lines.

I know that my noble friend the Minister agrees with the suggestion that there is a challenge here for the Government—she told me so. This issue is not going to go away, and it would be a constructive way forward for there to be a meeting—I would ask to be included in any such meeting. We are clear about where we want to get to, and that the appropriate phrase is "right care, right person". I do not think that

[Lord Davies of Brixton]
that is currently being delivered, so something needs to be done. I hope that we can move to a better system, in a constructive way.

Baroness Barker (LD): My Lords, like the noble Lord, Lord Davies of Brixton, I find myself in exactly the same place. We all know why the police have said that they are not the appropriate people to be first responders when somebody is having a mental health crisis and presenting a danger either to other people or to themselves. We also know that not putting anything in place, or not putting the right people in place, means that somebody having a crisis will not necessarily be seen by an appropriate person.

A number of us have looked at this and talked to people in the field, and we think that what will happen is that there will be a response from somebody on the front line in the National Health Service, either in an A&E department—because that is where a lot of people will go—or, more likely, from an ambulance. That will put the ambulance service under even greater strain and pressure than it is under now.

It is the hope of those of us who have been involved in the discussions so far—and the intent, I think, of the noble Baroness, Lady May, who is the prime mover behind this—that we do not do that. We should not wait until there is a terrible incident in which somebody is badly harmed; we must try to foresee that situation.

I suspect that, around the country, since the police have taken the decision that they have, front-line health services have had to come up with new ways of responding. The issue has not gone away; people are still going to have mental health crises in which they are a danger to themselves or seem to present a danger to others.

I propose that we follow the suggestion from the noble Lord, Lord Kamall, that there be further discussion on this—preferably with people from mental health organisations and from different parts of the NHS, as well as the police force—to see whether we can come up with something that will plug a very obvious gap.

As I have said before during the passage of this Bill, this is the last chance for the next 10 to 15 years to pass legislation on this subject. We need to behave diligently, take appropriate action now and not wait to rue the day in the future.

Baroness Merron (Lab): I thank the noble Lord, Lord Kamall, for tabling these amendments. They seek to amend Section 2 of the Mental Health Act, which relates to admission for assessment, and Section 3, which relates to admission for treatment, as well as Section 5(4), which relates to detention for six hours pending application admission.

I emphasise that the police do not currently have the ability to detain under Sections 2, 3 and 5 of the Act. These amendments, as the noble Lord has referred to and as we discussed earlier, would give police additional powers, where they currently do not have powers to intervene. The noble Lord will be aware, and he mentioned the fact, that we do not support extending police powers in this way, and we understand that the police do not support an extension either.

I am very happy to continue discussion with the office of the noble Baroness, Lady May, as I have done previously. I know that my noble friend Lord Davies would also welcome a discussion, which I am very happy to commit to.

The noble Lord asked for amendments on Third Reading, but such amendments are to clarify any remaining uncertainties, to improve drafting and to enable the Government to fulfil undertakings given at earlier stages of the Bill. I am sure the noble Lord will understand that amendments are therefore restricted to technical points. For all those reasons, I cannot give the agreement that he sought on an amendment at Third Reading, as it is not within scope to do so.

With regards to the ambition to reduce police attendance at mental health incidents, we recognise the pressures that police are facing, which noble Lords have highlighted, and agree that, in many cases, it is far preferable for those in mental health crisis to be responded to by health and care professionals. However, action is already under way to address this. Almost all police forces in England and Wales are implementing the "right care, right person" approach—a police-led initiative to reduce inappropriate police involvement in cases where people have health or social care needs. There has already been a 10% decrease in Section 136 detentions last year. We are taking steps to improve mental health services to avoid people reaching a crisis where police involvement may be required in the first place, which is a far more preferable position to be in. That includes through the Government's commitment of £26 million of capital investment to open new mental health crisis centres, which are far more suitable environments for those in mental health crisis to receive care and treatment.

Therefore, extending these legal powers currently held by the police to other professionals would represent a major shift in roles and responsibilities for health and care professionals. It would place significant additional pressures on the NHS and potentially lead to staff, patient and public safety issues which mental health and urgent and emergency care leads have already raised significant concerns about. It is for all these reasons that I ask the noble Lord, Lord Kamall, to withdraw his amendment.

Lord Reid of Cardowan (Lab): My Lords, just before my noble friend sits down and before the noble Lord, Lord Kamall, has to reach his crucial decision on this amendment, perhaps I may clarify something. As I understood it, my noble friend the Minister said she was more than happy to respond to the invitation or proposal from the noble Lord, Lord Kamall, and various other colleagues to discuss the issue further, but she obviously could not commit herself in advance to bringing forward an amendment. Is that the position?

5.30 pm

Baroness Merron (Lab): It is indeed. The noble Lord, Lord Kamall, was very specific about bringing an amendment forward at Third Reading, and it was to that that I explained it was not possible to commit. I thank my noble friend for allowing me to reiterate that.

Lord Kamall (Con): My Lords, I am grateful to the Minister for addressing the points that were raised, and I listened carefully to what she said. I had hoped that she would be open to resolving this issue, as I know she is with my noble friend Lady May. However, once again, there is a difference of opinion. As I understand it, amendments brought forward at Third Reading do not have to be only technical amendments and I had hoped that the Minister would give an undertaking to bring back an amendment at that stage. Given that we have a disagreement of interpretation on two issues, I am afraid I think it best to test the opinion—

Baroness Merron (Lab): It might be helpful for your Lordships' House to know that to fulfil what the noble Lord says, there would be a need for collective agreement to offer a commitment to bring forward an amendment at Third Reading, which I do not have. I emphasise the point made by my noble friend on this.

Lord Kamall (Con): That is entirely understandable. I know the Minister always means well in our discussions and always tries to find a solution, but, given that, it may be helpful to finding a solution if I test the opinion of the House.

5.32 pm

Division on Amendment 7

Contents 223; Not-Contents 157.

Amendment 7 agreed.

Division No. 1

CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Altmann, B.
Alton of Liverpool, L.
Altrincham, L.
Anelay of St Johns, B.
Ashcombe, L.
Balfe, L.
Banner, L.
Barran, B.
Bates, L.
Bellamy, L.
Bellingham, L.
Berkeley of Knighton, L.
Berridge, B.
Biggar, L.
Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Booth, L.
Booth-Smith, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brady of Altrincham, L.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Bull, B.
Buscombe, B.
Butler-Sloss, B.
Caine, L.
Callanan, L.
Cameron of Chipping Norton, L.
Camrose, V.
Carrington of Fulham, L.
Carter of Haslemere, L.
Cash, B.
Cass, B.
Colgrain, L.
Cooper of Windrush, L.
Courtown, E. [Teller]
Crathorne, L.
Cromwell, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eccles, V.
Effingham, E.
Elliott of Ballinamallard, L.
Elliott of Mickle Fell, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Guisborough, L.
Evans of Rainow, L.
Falkner of Margravine, B.
Fink, L.
Finkelstein, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Oxton, B.
Fox of Buckley, B.
Freeman of Steventon, B.
Freyberg, L.
Frost, L.
Fuller, L.
Garnier, L.
Gascoigne, L.
Geddes, L.
Gilbert of Panteg, L.
Gohir, B.
Gold, L.
Goldie, B.
Goodman of Wycombe, L.
Goschen, V.
Grayling, L.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Harlech, L.
Harrington of Watford, L.
Hay of Ballyore, L.
Hayward, L.
Henley, L.
Hill of Oareford, L.
Hintze, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hollins, B.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Bethnal Green, B.
Hunt of Wirral, L.
Inglewood, L.
Jackson of Peterborough, L.
Jamieson, L.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kempsell, L.
Kinnoull, E.
Kirkhope of Harrogate, L.
Laing of Elderslie, B.
Lamont of Lerwick, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lexden, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Londesborough, L.
Lucas, L.
Mackinlay of Richborough, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Marland, L.
Maude of Horsham, L.
McColl of Dulwich, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meston, L.
Meyer, B.
Minto, E.
Mobarik, B.
Morris of Bolton, B.
Morrissey, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Norton of Louth, L.
Offord of Garvel, L.
O'Loan, B.
O'Neill of Bexley, B.
Owen of Alderley Edge, B.
Parkinson of Whitley Bay, L.
Penn, B.
Pickles, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Randall of Uxbridge, L.
Ranger of Northwood, L.
Rawlings, B.
Redfern, B.
Remnant, L.
Risby, L.
Robathan, L.
Roborough, L.
Rock, B.
Rogan, L.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Sewell of Sanderstead, L.
Sharma, L.
Sharpe of Epsom, L.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Smith of Llanfaes, B.
Soames of Fletching, L.
Stedman-Scott, B.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Swire, L.
Taylor of Holbeach, L.
True, L.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Watkins of Tavistock, B.
Wei, L.
Weir of Ballyholme, L.
Wharton of Yarm, L.
Wigley, L.
Willetts, L.

Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

NOT CONTENTS

Alexander of Cleveden, B.
Alli, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Austin of Dudley, L.
Bach, L.
Bakewell, B.
Barber of Ainsdale, L.
Bassam of Brighton, L.
Beamish, L.
Berger, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bousted, B.
Bradley, L.
Brennan of Canton, L.
Brooke of Alverthorpe, L.
Brown of Silvertown, B.
Browne of Ladyton, L.
Caine of Kentish Town, B.
Campbell-Savours, L.
Carberry of Muswell Hill, B.
Carlile of Berriew, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Coaker, L.
Collins of Highbury, L.
Cryer, L.
Curran, B.
Davies of Brixton, L.
Debbonaire, B.
Drake, B.
D'Souza, B.
Dubs, L.
Eatwell, L.
Elliott of Whitburn Bay, B.
Evans of Sealand, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Golding, B.
Goudie, B.
Gray of Tottenham, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hain, L.
Hampton, L.
Hannay of Chiswick, L.
Hannett of Everton, L.
Hanson of Flint, L.
Harris of Haringey, L.
Haskel, L.
Hayman of Ullock, B.
Hayman, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy of Richmond Hill, L.
Hendy, L.
Hermer, L.
Hodge of Barking, B.
Hollick, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Jay of Ewelme, L.
Jones of Penybont, L.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Kakkar, L.
Katz, L.
Keeley, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kingsmill, B.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Layard, L.
Lemos, L.
Lennie, L.
Leong, L.
Levitt, B.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Longfield, B.
Loomba, L.
Mattinson, B.
Mawson, L.
McCabe, L.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Mendelsohn, L.
Merron, B.
Monks, L.
Moraes, L. [Teller]
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morris of Yardley, B.
Nye, B.
O'Grady of Upper Holloway, B.
Pitkeathley of Camden Town, L.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Primarolo, B.
Rafferty, B.
Ramsay of Cartvale, B.
Ramsey of Wall Heath, B.
Rees of Easton, L.
Reid of Cardowan, L.
Robertson of Port Ellen, L.
Rook, L.
Rooker, L.
Sahota, L.
Sherlock, B.
Sikka, L.
Smith of Basildon, B.
Smith of Cluny, B.
Smith of Malvern, B.
Snape, L.
Spellar, L.
Stansgate, V.
Stevenson of Balmacara, L.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Timpson, L.
Touhig, L.
Tunnicliffe, L.
Turnberg, L.
Twycross, B.
Vallance of Balham, L.
Walney, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
Wheatcroft, B.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wilson of Sedgefield, L.
Winston, L.
Winterton of Doncaster, B.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.

5.43 pm

Amendments 8 to 10

Moved by ***Lord Kamall***

8: Clause 5, page 11, line 33, after "detained" insert "by a constable or other authorised person"

Member's explanatory statement

This amendment and others in the name of Lord Kamall seek to introduce a new category of "authorised person" who can carry out detentions under the 1983 Act to offer better inter-agency response. The proposed amendments would remove the need for the presence of police at mental health incidents in the absence of any risk.

9: Clause 5, page 12, line 6, at end insert "by a constable or other authorised person"

Member's explanatory statement

This amendment and others in the name of Lord Kamall seek to introduce a new category of "authorised person" who can carry out detentions under the 1983 Act to offer better inter-agency response. The proposed amendments would remove the need for the presence of police at mental health incidents in the absence of any risk.

10: Clause 5, page 12, line 21, at end insert—

"(7) In section 145(1) (interpretation), at the appropriate place insert—

""authorised person" means a medical practitioner, approved mental health professional, mental health nurse or doctor, or a person of description specified in regulations made by the Secretary of State, who has been trained and equipped to carry out detentions under this Act and who would not be put at unnecessary risk by carrying out those functions;""

Member's explanatory statement

This amendment and others in the name of Lord Kamall seek to introduce a new category of "authorised person" who can carry out detentions under the 1983 Act to offer better inter-agency response. The proposed amendments would remove the need for the presence of police at mental health incidents in the absence of any risk.

Amendments 8 to 10 agreed.

Clause 6: Grounds for community treatment orders

Amendment 11

Moved by ***Lord Scriven***

11: Clause 6, page 12, line 40, at end insert—

"(2A) In section 17B (conditions) after subsection (7) insert—

"(8) The responsible clinician must ensure that community treatment orders align with the code of practice as set out in section 118(2B).

(9) A community treatment order shall have a maximum duration of 12 months, subject to the following provisions—

(a) the responsible clinician may extend the duration of a community treatment order beyond 12 months only after—

(i) consulting the patient, the patient's nominated persons, and any relevant mental health care professional involved in the patient's treatment or care planning;

(ii) undertaking a review process to evaluate the ongoing necessity and therapeutic benefit of the community treatment order;

(iii) consulting a General Medical Council registered psychiatrist regarding the conditions of the community treatment order and obtaining their written agreement that an extension is necessary and in accordance with the principles set out in section 118(2B);

(b) community treatment orders with a duration of less than 12 months are not subject to the review process set out in subsection (9)(a)(ii);

(c) a tribunal may recommend that the responsible clinician consider whether to extend, vary, or terminate the duration and conditions of a community treatment order.

(10) Where a community treatment order is extended beyond a period of 12 months, the order shall be subject to review at intervals not exceeding six months, in accordance with the procedure set out in subsection 9(a).

(11) At the conclusion of the default period or any extended period, the responsible clinician must undertake a review to assess the effectiveness of the community treatment order in aligning with the code of practice stipulated in section 118(2B).""

Member's explanatory statement

This amendment ensures that community treatment orders align with the code of practice, limits their default duration to 12 months, requires a structured review process for extensions, mandates six-monthly reviews for extended orders, and reinforces patient consultation and oversight by mental health professionals.

Lord Scriven (LD): My Lords, I start this group on community treatment orders by thanking the Minister and her team of officials for dealing not just with this issue but with most issues in the Bill on a collaborative basis, which should be a blueprint for how Ministers should deal with people with different opinions to those of the Government. It is genuine thanks from these Benches.

I also thank my noble friend Lady Parminter for giving her lived experience of community treatment orders. In Committee, there was a huge divide in this House about whether they should continue rather than pragmatism on how we deal with the problem. My noble friend Lady Parminter focused our minds on that.

My amendment tries to deal with what I see as the major flaw of community treatment orders, whether or not we have a review of them, and that is their potentially indefinite nature. As for the way that these community treatment orders are implemented, whether they are effective or not, there seems to be a revolving door which some people find impossible to get out of. This has led to a number of issues about whether they have therapeutic benefit and whether the treatment is actually effective. There have also been huge issues to do with racial disparities in their use and the length of time that people are on a community treatment order.

Even if we agree Amendment 23, in the name of the noble Baroness, Lady Bennett, and Amendment 62, in the name of the noble Lord, Lord Kamall, to have a review of their effectiveness, something needs to be done now to ensure that the initial community treatment order is time-limited—I suggest 12 months—then if it is to be reviewed, it has to be reviewed by not just the consultant who is treating the individual but also by another GMC psychiatrist who has to agree in writing that there is therapeutic benefit for the community treatment order to continue. That review should take place every six months. That would not stop community treatment orders, but it gives an absolute, firm process, which needs to be in the Bill—not in the code of practice—to ensure that individuals who are on a community treatment order have certainty about the length of time and review. It would also require a second doctor's written agreement about the therapeutic benefit of reviewing and continuing the treatment order.

I understand that the Minister will probably and quite rightly say that the Bill has moved forward and that there are certain elements which help with the review of treatment orders and the people being put on them. For example, the community doctor has to be consulted. However, there is a difference between being consulted and giving agreement. That is why my amendment talks about the agreement of a second doctor. Consultation in itself does not mean that community treatment orders cannot be indefinite, as they are in some cases. My amendment is practical and solves this problem. As my noble friend Lady Barker said, we tend to get legislation about the Mental Health Act once every 15 years, and we cannot wait another 15 years to deal with this anomaly.

I and others on these Benches would be supportive of a review of community treatment orders and of the evidence about whether they are effective in the grand sense. However, the practical pragmatism is that people will continue to be put on community treatment orders, that, even with the changes that the Government have put in the Bill, people would still be there indefinitely and that the second doctor's opinion would not necessarily have to be taken into consideration if the order were to continue to ensure that there was therapeutic benefit.

I will not say much more, but I believe that my amendment is practical, needed and will get the correct balance both for service providers and for those who are on a community treatment order to deal with some of the unintended consequences we have found since they were introduced. It is a practical step to ensure that we get them right, if reviews take place. I beg to move.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow the noble Lord, Lord Scriven, and to agree, in essence, with everything he said. Amendment 11 is truly important; it would immediately affect the well-being of some very vulnerable people in our community. Should the noble Lord decide to divide the House, the Green Party will support his amendment.

I will chiefly speak to my Amendment 23, which also relates to community treatment orders and calls for a statutory periodic review of them. I can see quite a few noble Lords in the House, so it is worth very briefly going back a little over what we discussed in Committee. The Joint Committee on the draft Bill concluded that CTOs should be abolished for people under Part II, the civil sections. For people under Part III, the Joint Committee recommended a statutory review of CTOs with a provision to abolish them unless the Government legislated to keep them.

[Baroness Bennett of Manor Castle]

My amendment does not go that far, but it starts from the point that the noble Lord, Lord Scriven, mentioned, citing the noble Baroness, Lady Barker: it is likely to be at least 15 years before legislative attention returns to the Mental Health Act. That is a very long time—especially for the health of people who are going through certain experiences. I stress that it is not my own initiative that brought this amendment forward; the organisation Mind encouraged me to do so. I will quote from a couple of people who Mind has spoken to about CTOs, because we have to consider what the actual lived experience is like. One person said:

"Being on a CTO is like being cornered … It is good that you are out of hospital but only a little better because it is so intrusive".

Another person who had been on a CTO said that it can feel like:

"A tag that nobody can see but you know it's around your mind".

Throughout the debate on this Bill, we have considered getting rid of CTOs entirely. As the noble Lord, Lord Scriven, said, the noble Baroness, Lady Parminter, made the very powerful case that there may be circumstances and conditions where they are indeed appropriate. However, my amendment simply calls for a statutory review, so that we do not wait 15 years and then say, as we have been saying about so many aspects of what we are trying to fix now, "This has been terrible for so long. We really need to do something about this".

I say to the noble Lord, Lord Kamall, that I am still planning to arrange the Trieste meeting; I am afraid I have not got there yet. Looking at community alternatives has to be the way forward. There are models around the world where that is achieved. If we were to have a review, as my amendment would require, then everything in proposed new subsection (3)—which looks at "the impact … on people from different ethnic minority backgrounds", preventing readmissions and whether CTOs provide "therapeutic benefits"—would be considered within a reasonable period. We could affect and improve people's treatments within a foreseeable period and not sentence them to another 15 years.

It is not my intention to divide the House. I very much hope that the Bill will continue to work on this, and that the arguments for including a statutory review will become evident as the Bill progresses. On that basis, I urge noble Lords, particularly the Minister, to consider that, and I echo the points that the noble Lord, Lord Scriven, made. My engagement between different stages of the Bill tends to be limited by the fact that I am juggling a great many Bills at the same time. However, I have heard reports of how the Minister has been engaging with noble Lords, and I hope that she and the department will bring an open mind to the idea that we should not sentence people to another 15 years of CTOs without a statutory review, because there have been so many questions and concerns about them. On that basis, I hope that we can move forward as the Bill progresses.

Baroness Tyler of Enfield (LD): My Lords, I will very briefly speak in support of this very important set of amendments. As my noble friend Lord Scriven set out on Amendment 11, which I very strongly support, the case for having some conditionality around community treatment orders is overwhelming, including making them time limited and having a second doctor's certification to confirm their therapeutic benefit. Both are very hard to argue against. They get the right balance between, as we heard in earlier stages, those who want to get rid of the orders altogether and those who feel that we need to tighten up the conditions. The other two review amendments are also very important.

Finally, we need to remind ourselves, as we did at Second Reading and in Committee, that black people are seven times more likely to be on a community treatment order than other members of the population. That is why this is so important.

Lord Kamall (Con): My Lords, I thank the noble Lord, Lord Scriven, for the excellent way he introduced his Amendment 11. I fully support everything that he said.

The suitability of community treatment orders is an issue that has obviously featured heavily in the discussions on the Bill so far. I think that many of us came to the debates on the Bill, having read the Joint Committee's pre-legislative scrutiny report, thinking that we were going to support the abolition of community treatment orders or be very sympathetic to that idea. However, two contributions gave us a reason to pause and think. One was the personal story from the noble Baroness, Lady Parminter; the other was hearing the noble Baroness, Lady Barker, say that she previously believed that they should be abolished before realising that they are entirely appropriate for a small number of situations or cases. In fact, given that one of the principles of the Bill is imposing the least amount of restriction, maybe they are the least restrictive solution for some incidents.

Having said that, very serious concerns obviously remain about the use of community treatment orders in their current form. Other noble Lords and I spoke in Committee about the overrepresentation of black males, which is what my Amendment 62 intends to address. It was a shame that the deliberations on this issue came so late at night, but I thank the Minister and her officials for their engagement. I asked three simple questions: what do we know about why black people are disproportionately detained? What do we not know? What research and work are we conducting—I know this sounds like a PhD research thesis seeking to generate the research questions so that someone can go from an MPhil to their PhD—and what is the gap in research to generate the questions for the primary research?

I was very reassured by the responses from the Minister and her officials that they take this seriously. They set out in detail the work that they are doing. In fact, the Minister put a lot of that in a letter to me. It would be unfair of me to ask her to read out precisely what is in that letter, because we would be here for quite a few hours, but can she share some of those assurances with the House? It would be very helpful for other noble Lords to understand why, given that letter, I have decided that I will not push my amendment to a vote.

As I said, the noble Lord, Lord Scriven, has struck the right balance. The amendment acknowledges that there are issues with CTOs and allows for their continued

use, under restrictions. It is really important that, in every case, there is a review, and 12 months would seem an appropriate time for that review, rather than cases just being forgotten about, people being caught up in other casework or cases falling behind the filing cabinet—if there was another analogy I could use, I would. If the noble Lord, Lord Scriven, decides to divide the House, these Benches will support him.

I look forward to hearing some of the assurances the Minister gave to me and others on racial disparities. I hope also that she can address the concerns of the noble Lord, Lord Scriven.

6 pm

Baroness Merron (Lab): I thank the noble Lord, Lord Scriven, for tabling and speaking to Amendment 11, along with the noble Baroness, Lady Tyler. At the outset, I can say that it is already the case that community treatment orders can be renewed only under specific conditions, which aligns with the intent and direct requests of the noble Lord, Lord Scriven.

Alignment with the code and the four principles is already achieved by new Section 118(2D) of the Mental Health Act, which requires clinicians, before placing someone on a community treatment order, to have regard to the statement of principles in the code. Clause 6 ensures that a patient can be put on a community treatment order only if there is a risk of serious harm without it and a reasonable prospect of it having therapeutic benefit for the patient.

I assure your Lordships' House that a responsible clinician cannot extend a community treatment order beyond six months, unless the conditions, including therapeutic benefit, continue to be met. A community treatment order can be extended for a further six months and then a subsequent 12 months, but only if these conditions continue to be met.

The current code of practice states that, before renewal, the responsible clinician should consult with the multidisciplinary team, the patient, the nearest relative—which in future will be the nominated person—and an advocate. I put it to the House that we are going further than the request from the noble Lord, Lord Scriven, by introducing a new requirement for the patient's community clinician—who must be an approved clinician, overseeing the patient's care as a community patient—to be consulted before a community treatment order is renewed beyond six months.

I have heard the concerns of the noble Lord, Lord Scriven, that the Bill requires just the second-opinion appointed doctor to be consulted, whereas the amendment requires the extension to be agreed with them. In response to that, I assure the noble Lord that, in addition, the community clinician must provide a statement that it appears to them that the community treatment order criteria continue to be satisfied.

We are increasing the frequency of automatic referrals to the tribunal to ensure that patients can come off community treatment orders when they are no longer benefiting them. The tribunal will have a power to recommend that the responsible clinician reconsiders whether a CTO condition is necessary. To elaborate further in view of the points raised, this means that, following an initial tribunal referral at six months, another referral is required after a further six months, followed by a mandatory referral 12 months after that, if the patient has not made an appeal themselves. The tribunal will have to agree the CTO criteria, including the requirement that a therapeutic benefit continues to be met. We are therefore already meeting the requests that the noble Lord, Lord Scriven, has rightly made and, in some places, going further than we have been asked to do.

I turn to Amendment 23, tabled by the noble Baroness, Lady Bennett. As I said on the similar amendment tabled by noble Lords on the Opposition Front Bench in Committee, CTOs remain a valuable intervention, albeit they need reform—as I more than acknowledge and accept. We will review these changes as part of our ongoing monitoring of the implementation and impact of the reforms. A review after two years would be premature, as it would be based on data from before any reforms were commenced. I say to the noble Baroness and your Lordships' House that we will instead commit to review the impact our reforms have as part of our wider monitoring and evaluation of the Bill as it is implemented.

Amendment 62 is in the name of the noble Lord, Lord Kamall, and the noble Earl, Lord Howe. We are, as the noble Lord acknowledged, committed to addressing racial disparities under the Act—something I know the noble Baroness, Lady Tyler, was concerned about. I was very pleased to host a session a couple of weeks ago with leading academics, a number of officials from the department and Members of this House. We discussed in detail what is known and what further evidence is required. I give the assurance that work—as the noble Lord, Lord Kamall, has kindly acknowledged—is already under way, and we will continue to explore this issue. I am therefore happy to commit to undertake further investigation into racial inequalities under the Act.

The scope is to be developed further, but may involve synthesising findings of existing research, conducting a review of recent literature, and exploration of potential evidence gaps that require future research with experts and academics. Further research will receive sufficiently high-quality research applications and will be subject to the outcome of the spending review. I hope noble Lords will understand that we therefore prefer not to commit to a timescale in primary legislation but to allow time to develop and deliver research to ensure the best-quality evidence in this extremely important area. I hope noble Lords will not press their amendments.

Lord Scriven (LD): I thank the Minister for that helpful explanation and description of community treatment orders. Despite all the words, whenever independent research is done, whether by the CQC, the Joint Committee or mental health organisations, the same answer keeps coming back. Something is fundamentally flawed, maybe not with the policy but with the implementation of CTOs. I note the Minister quoted the rule in the code of practice but, as we know, the code of practice does not necessarily have the legal status of something in the Bill. Therefore, for that reason and because there is an issue with community treatment orders, I believe that putting this in the Bill will not just change the

[Lord Scriven]
practice but get the correct safeguards for people who are put on them. I would like to test the opinion of the House.

6.07 pm

Division on Amendment 11

Contents 272; Not-Contents 157.

Amendment 11 agreed.

Division No. 2

CONTENTS

Aberdare, L.
Addington, L.
Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Alderdice, L.
Altmann, B.
Alton of Liverpool, L.
Altrincham, L.
Anelay of St Johns, B.
Ashcombe, L.
Balfe, L.
Banner, L.
Barker, B.
Barran, B.
Bates, L.
Beith, L.
Bellamy, L.
Bellingham, L.
Benjamin, B.
Bennett of Manor Castle, B.
Berridge, B.
Bew, L.
Biggar, L.
Black of Brentwood, L.
Blackwood of North Oxford, B.
Blencathra, L.
Bloomfield of Hinton Waldrist, B.
Bonham-Carter of Yarnbury, B.
Booth, L.
Booth-Smith, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowles of Berkhamsted, B.
Brady of Altrincham, L.
Brinton, B.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Bruce of Bennachie, L.
Caine, L.
Callanan, L.
Camrose, V.
Carrington of Fulham, L.
Cass, B.
Clement-Jones, L.
Coffey, B.
Colgrain, L.
Courtown, E.
Crathorne, L.
Cromwell, L.
Cruddas, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Dholakia, L.
Dobbs, L.
Doocey, B.
D'Souza, B.
Duncan of Springbank, L.
Dunlop, L.
Eccles, V.
Effingham, E.
Elliott of Mickle Fell, L.
Evans of Bowes Park, B.
Evans of Guisborough, L.
Evans of Rainow, L.
Falkner of Margravine, B.
Featherstone, B.
Fink, L.
Finkelstein, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Bath, L.
Foster of Oxton, B.
Fox of Buckley, B.
Fox, L.
Freeman of Steventon, B.
Freyberg, L.
Frost, L.
Fuller, L.
Garden of Frognal, B.
Garnier, L.
Gascoigne, L.
German, L.
Gilbert of Panteg, L.
Goddard of Stockport, L.
Gohir, B.
Gold, L.
Goldie, B.
Goodman of Wycombe, L.
Goschen, V.
Grayling, L.
Greenway, L.
Grender, B.
Griffiths of Fforestfach, L.
Grimstone of Boscobel, L.
Hailsham, V.
Hamilton of Epsom, L.
Hamwee, B.
Harlech, L.
Harrington of Watford, L.
Harris of Richmond, B.
Hayward, L.
Helic, B.
Henley, L.
Herbert of South Downs, L.
Hill of Oareford, L.
Hintze, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hoey, B.
Hollins, B.
Holmes of Richmond, L.
Hooper, B.
Hope of Craighead, L.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Humphreys, B. [Teller]
Hunt of Bethnal Green, B.
Hunt of Wirral, L.
Hussein-Ece, B.
Inglewood, L.
Jackson of Peterborough, L.
Jamieson, L.
Janke, B.
Jenkin of Kennington, B.
Johnson of Lainston, L.
Johnson of Marylebone, L.
Jones of Moulsecoomb, B.
Jopling, L.
Kakkar, L.
Kamall, L.
Keen of Elie, L.
Kempsell, L.
Kerr of Kinlochard, L.
Kirkhope of Harrogate, L.
Kramer, B.
Laing of Elderslie, B.
Lamont of Lerwick, L.
Lansley, L.
Lawlor, B.
Lea of Lymm, B.
Lee of Trafford, L.
Leicester, E.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lingfield, L.
Londesborough, L.
Lucas, L.
Ludford, B.
Mackinlay of Richborough, L.
Maclean of Redditch, B.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Markham, L.
Marks of Hale, L.
Marks of Henley-on-Thames, L.
Marland, L.
Maude of Horsham, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
McIntosh of Pickering, B.
McLoughlin, L.
Mendoza, L.
Meston, L.
Minto, E.
Mobarik, B.
Mohammed of Tinsley, L.
Morris of Bolton, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Newby, L.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Northbrook, L.
Northover, B.
Norton of Louth, L.
Oates, L.
O'Loan, B.
O'Neill of Bexley, B.
Owen of Alderley Edge, B.
Pack, L.
Paddick, L.
Palmer of Childs Hill, L.
Parkinson of Whitley Bay, L.
Parminter, B.
Penn, B.
Pickles, L.
Pidding, B.
Pidgeon, B.
Pinnock, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Prior of Brampton, L.
Purvis of Tweed, L.
Randall of Uxbridge, L.
Ranger of Northwood, L.
Rawlings, B.
Razzall, L.
Redesdale, L.
Redfern, B.
Remnant, L.
Risby, L.
Roborough, L.
Rock, B.
Russell, E.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Scott of Bybrook, B.
Scriven, L.
Seccombe, B.
Sewell of Sanderstead, L.
Shackleton of Belgravia, B.
Sharkey, L.
Sharma, L.
Sharpe of Epsom, L.
Sheehan, B.
Sherbourne of Didsbury, L.
Shields, B.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Smith of Llanfaes, B.
Smith of Newnham, B.
Soames of Fletching, L.
Stedman-Scott, B.
Stoneham of Droxford, L. [Teller]
Storey, L.
Strathcarron, L.
Strathclyde, L.
Sugg, B.
Suttie, B.
Swire, L.
Taylor of Holbeach, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornhill, B.
Thurso, V.
Tope, L.
True, L.
Tugendhat, L.
Tyler of Enfield, B.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Walmsley, B.
Watkins of Tavistock, B.
Wei, L.
Weir of Ballyholme, L.
Wharton of Yarm, L.
Wheatcroft, B.

Williams of Trafford, B.
Wolfson of Tredegar, L.
Wyld, B.
Young of Acton, L.
Young of Cookham, L.
Younger of Leckie, V.

NOT CONTENTS

Alexander of Cleveden, B.
Alli, L.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Austin of Dudley, L.
Bach, L.
Bakewell, B.
Barber of Ainsdale, L.
Bassam of Brighton, L.
Beamish, L.
Berger, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bousted, B.
Bradley, L.
Brennan of Canton, L.
Brooke of Alverthorpe, L.
Brown of Silvertown, B.
Browne of Ladyton, L.
Bull, B.
Caine of Kentish Town, B.
Campbell-Savours, L.
Carberry of Muswell Hill, B.
Carlile of Berriew, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Coaker, L.
Collins of Highbury, L.
Cryer, L.
Curran, B.
Davies of Brixton, L.
Debbonaire, B.
Donoughue, L.
Drake, B.
Dubs, L.
Eatwell, L.
Elliott of Whitburn Bay, B.
Evans of Sealand, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Golding, B.
Goldsmith, L.
Goudie, B.
Gray of Tottenham, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hain, L.
Hannay of Chiswick, L.
Hannett of Everton, L.
Hanson of Flint, L.
Hanworth, V.
Harris of Haringey, L.
Haskel, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy of Richmond Hill, L.
Hendy, L.
Hermer, L.
Hollick, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Hunt of Kings Heath, L.
Janvrin, L.
Jay of Ewelme, L.
Jones of Penybont, L.
Jones of Whitchurch, B.
Jones, L.
Jordan, L.
Katz, L.
Keeley, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kingsmill, B.
Kinnock, L.
Kinnoull, E.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Layard, L.
Lemos, L.
Lennie, L.
Leong, L.
Levitt, B.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Livermore, L.
Longfield, B.
Mattinson, B.
Mawson, L.
McCabe, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Moraes, L. [Teller]
Morgan of Drefelin, B.
Morgan, L.
Morris of Yardley, B.
O'Grady of Upper Holloway, B.
Pitkeathley of Camden Town, L.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Primarolo, B.
Rafferty, B.
Ramsay of Cartvale, B.
Ramsey of Wall Heath, B.
Raval, L.
Rees of Easton, L.
Reid of Cardowan, L.
Robertson of Port Ellen, L.
Rook, L.
Sahota, L.
Sherlock, B.
Sikka, L.
Smith of Basildon, B.
Smith of Cluny, B.
Smith of Malvern, B.
Snape, L.
Spellar, L.
Stansgate, V.
Stevenson of Balmacara, L.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Timpson, L.
Touhig, L.
Tunnicliffe, L.
Turnberg, L.
Twycross, B.
Vallance of Balham, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wilson of Sedgefield, L.
Winston, L.
Winterton of Doncaster, B.
Wood of Anfield, L.
Woodley, L.
Young of Old Scone, B.
Young of Old Windsor, L.

6.18 pm

Clause 8: Appropriate medical treatment: therapeutic benefit

Amendment 12

Moved by ***Earl Howe***

12: Clause 8, page 14, line 19, at end insert—

"(iii) seeks to minimise the patient's distress and promote psychological wellbeing and recovery from any childhood trauma;"

Earl Howe (Con): My Lords, in moving Amendment 12, I will speak also to four other amendments in my name included in this group: Amendments 13, 15, 37 and 41.

To set the scene, there is a theme running through all the amendments in this group—not only mine—which is patient empowerment. All of us, I am sure, welcome the fact that patient empowerment is already writ large in the substance of this Bill, and as the changes that it makes are taken forward, as they will be, I am certain that they will be hugely beneficial to patients. However, as we heard in Committee, there remain features of mental health law and practice that give cause for real concern. My contention, which I am sure is shared, is that we should try to do all we can to make sure that the procedures, clinical practice and, if possible, cultures are made as good as they can possibly be in the way that this legislation is drafted.

My Amendments 12 and 13 are identical to amendments that I tabled in Committee. The point of them is to signal something important about the culture of mental health care. Many of us may take for granted that the aim and purpose of treatment in a mental health unit is to promote psychological well-being and recovery and to minimise distress, but we know that there are many patients undergoing treatment for whom distress and psychological trauma are ever-present features of in-patient care, particularly children and young people. The noble Lord, Lord Crisp, reminded us of that earlier. My Amendment 58, which we will debate in a later group, is designed to tackle this problem in a practical way.

The same applies to my Amendment 41, which brings us back to an issue that I am glad to say received strong support from noble Lords in Committee: the need to beef up the provisions in this Bill around advanced choice documents. ACDs are a great idea and I am delighted that the Government have recognised their potential for enhancing patient well-being, because that is what they will certainly do. We know from research that they have the potential to reduce compulsory detention rates appreciably, as well as reducing time spent in hospital. However, as the Bill is now expressed, patients will not be guaranteed an opportunity to

[Earl Howe]
create an advanced choice document, if that is their wish. All that we have in Clause 42 is a provision to allow commissioners to make information on ACDs available to people for whom they are responsible. I do not think that that is good enough.

I turn to my Amendment 15 and, in doing so, focus on an issue that has been brought to my attention by the Law Society relating to nasogastric tube feeding of patients in mental hospitals. The central concern here is that the Mental Health Act 1983 contains no specific safeguards for situations where nasogastric tube feeding of a patient is being proposed. That is because it is considered to fall under Section 63 of the Act, which does not require a second opinion appointed doctor. I suggest that this is unsatisfactory.

In January of this year alone, according to the most recent data, there were 1,975 uses of restraint to facilitate nasogastric feeding in England. Furthermore, a recent comprehensive audit of in-patient mental health units in England reported that the duration of nasogastric tube feeding under physical restraint ranged from a single feed to 312 weeks, with a mean duration of 29.1 weeks. In other words, this is an invasive procedure and the degree of invasiveness can be measured not just by the amount of force used but by the length of time for which the treatment lasts.

Professor Phil Fennell outlined the significant gaps in patient protection in the use of nasogastric tube feeding in his 2019 article, *The Regulation of Tube Feeding: a Critical Analysis*, and this highlighted the need for regulations.to govern the use of nasogastric tube feeding to achieve a more patient-centred approach to what is quite a drastic medical intervention. The same issue was previously raised in 2007 by the Joint Committee on Human Rights, which pointed out that forcible feeding is potentially a breach of Articles 3 and 8 of the convention, and it, too, questioned why it was not subject to regulation in the same way as ECT is under Section 58 of the Act. The response at that time was that the provisions were compliant with the ECHR.

However, this was before the decision in X v Finland, and in this case, the European Court of Human Rights found that Finland violated X's rights under Articles 5, 8 and 13 of the convention. X was involuntarily admitted to a mental institution and forcibly medicated with nasogastric tube feeding, which the court deemed unjustified and a breach of her rights to liberty and privacy. Additionally, X lacked an effective remedy to challenge the forcible medication. However, the court did not find a violation of her right to a fair trial under Article 6.

The Law Society has put it to me that this highlights the wider need for safeguards, as patient X did not have sufficient avenues for challenging forcible nasogastric tube feeding. It strongly contends—and I agree—that the Bill represents a real opportunity for making a change to the law in a way that creates a direct safeguard for patients consistent with the safeguards applicable to electro-convulsive therapy, and that is what my amendment seeks to achieve.

Finally, I direct the House's attention to Amendment 37. This returns us to a Committee debate we had on 22 January. The patient voice in mental health care is, I would argue, inherently weaker than it is in other fields of healthcare, and the patient experience that much more determinative of outcomes. That really matters because, as we know from evidence provided by the CQC and many patient-representative groups, the care of patients in mental health settings is frequently underresourced. It therefore carries with it a heightened degree of risk that acceptable standards of care are not always maintained.

In this amendment, which replicates the amendment I tabled in Committee, I am putting forward the idea that, if every patient discharged from a mental healthcare setting were to be given the opportunity to rate, comment on and provide constructive feedback on the treatment they had received while in hospital, the value to the system and the potential value to the patient could be very significant.

I know that the Minister does not take issue with this. Indeed, I am sure she is sympathetic to what I have said. What I must question, though, is the premise of her response to me in Committee. In that response, she sought to argue that the visits and interviews with patients carried out by the CQC fulfil a function that, in terms of transparency and empowerment of patients, is identical to the kind of debriefing that I am arguing for.

Having heard what I have heard from well-informed patient groups, I must beg to disagree. The reality of the CQC's encounters and interviews with patients is an evidence-gathering process that is all too often skewed. Here are some of the comments from patients that have been relayed to me. "I know when we had a CQC visit, the nursing staff would steer CQC in the direction of patients who would reflect positively about the ward." Someone else said: "A lot of the time, if you speak to the CQC, they will have staff present at the same time, so you can't be honest".

Patients have also expressed doubts about the effectiveness of the CQC's monitoring process in general. I will share a couple of typical comments. "There's been examples of where it took three to four years of the same consistent reports"—of a mental health unit—"for the CQC to eventually do something about it". And again, "If this process"—of the CQC—"was working, young people would be having a much better experience".

It has been put to me that one of the differences between the process adopted by the CQC and the debriefing process that my amendment proposes is that the CQC does not take an individualised approach to its monitoring. I am sure that the CQC is sincere in wanting to speak to people about their poor experience of hospital care, but, in practice, people say they have often felt dismissed when speaking about what they have experienced.

There is a wider point here as well. In the words of another patient: "De-briefing isn't just complaining. It's discussing and reflecting on events during admission and the patient's experience in order to learn from it. A complaint is given and then dealt with behind the scenes, whereas a de-brief is a reflective discussion between multiple people where the young person is an active participant in discussing their own experience". Another said: "It gives people the room to process things".

In practice, the independent mental health advocate would take responsibility for the debriefing process. The Minister expressed concern about that and about the risk of overburdening those individuals. I appreciate that concern, but suggest that a conversation with a patient, or former patient, taking the form of a debriefing is squarely in line with the existing role of an independent mental health advocate. It would not be asking him or her to do appreciably more than they do already. As one patient put it:

"The IMHAs doing the de-briefing is already technically what they do, there just isn't a formal name to the process … They don't need any specific training to be able to manage the process as they already know what to do. They are there to advocate"

for them.

6.30 pm

I genuinely believe that providing a mental health patient with the opportunity to reflect in relative tranquillity upon their recent hospital experience would not only benefit any future treatment that they may receive and help to hold institutions accountable but constitute part of the healing process for that patient. It would help them offload a burden that they carry and thus move on.

I am arguing, as much as the Bill does already, for greater patient empowerment and greater transparency around what is done to patients in our mental health hospitals. If the case that I have tried to make resonates at least to some degree with the Minister then I very much hope that she will consider it. I beg to move.

Baroness Watkins of Tavistock (CB): My Lords, I will first reflect on the introduction to this group from the noble Earl, Lord Howe. I found it deeply moving. As many of your Lordships know, I am a mental health nurse. I have worked in locked units and acute units. Some of the things that he just described happened 30 years ago. What is so sad is that they are still happening now.

I will speak to the three amendments in my name, Amendments 14, 42 and 43. I thank other noble Lords who have added their names to them. These amendments have been drafted with help from the Royal College of Psychiatrists and are supported by several mental health patient and user groups and charities that work with the Mental Health All-Party Group in particular.

Amendments 14 and 42 would ensure that advance choice documents within the Mental Health Act are aligned with the existing best practice on providing such documents. Amendment 43 would ensure that clinicians and relevant bodies have a responsibility or duty to consider the information that is provided in the advance choice documents and use it to inform care and treatment orders given under the Mental Health Act. This is important. Clinicians, nurses and social workers need time to undertake the responsibility of sharing what is in those documents and trying—even if they are not always able to—to design care that reflects what people have asked for before. We continue to have a shortage of staff in mental health and very tight budgets compared with some other parts of the health service. If this is put as a duty in the Mental Health Act, it will help to resolve some of those issues.

I hope that the Minister can support the amendments, so that the rights of some of the most vulnerable patients from all ethnic groups in this country are strengthened within the documents, with the right to ensure that staff have enough time to deliver what is in the documents.

Baroness Bennett of Manor Castle (GP): My Lords, it is a pleasure to follow that short but extremely powerful contribution, informed by so much professional experience. I think that the whole House would like me to acknowledge that.

My Amendment 63 is about the powers of tribunals to determine challenges against treatment decisions. In many ways the argument for this follows on from the noble Baroness, Lady Watkins, just said. Things go wrong. However much we are trying through this Bill to improve the treatment of people with serious mental illness, I am afraid that we all acknowledge that things will continue to go wrong. Again, I have tabled this amendment at the request of Mind, which feels that there should be something like this. The amendment would not create any automatic right. It says that the Secretary of State may, by regulations, make provision about appeals. It would set up the framework to make this possible.

We had extensive discussion on this in Committee. I will not rehash all of that. We are trying to create mechanisms of common justice, ways forward and possibilities. We all acknowledge that so much of what is in this Bill will not be delivered within a month, a year or even two years, but it is trying to create the frame to make that possible. This is a very strong argument for that.

The noble Baroness, Lady Watkins, powerfully made the case for Amendment 14. I added my name to it as it is so important that it should have a full slate.

I will briefly address Amendment 13, in the names of the noble Earl, Lord Howe, and the noble Lord, Lord Kamall, to which I have also added my name. All through Committee, it kept occurring to me, though I never found the place to reflect it, that the word "trauma" does not appear once in the Bill. I was really surprised about that. I thought about several debates that I have had, going back to the Domestic Abuse Act and the Schools Bill under the previous Government that never became an Act. There was a lot of discussion about the need for trauma-informed environments and trauma-informed care. There is a general sense of intention from your Lordships' House that this is one of the things that we are thinking about, but there is nothing about it in the Bill.

Therefore, this amendment would add the words

"seeks to minimise the patient's distress"

and promote their

"recovery from any childhood trauma".

That is possibly a bit narrow. The Minister might take away and think about the fact that nothing in the Bill talks about the fact that so many of the patients we are talking about will have been through hideous traumas: childhood abuse, domestic abuse, war situations, torture—all kinds of circumstances. This is a chance to ensure that we put in the Bill, perhaps even more broadly than in this amendment, an awareness

[Baroness Bennett of Manor Castle]
of the need to think about trauma. I think we are all thinking this, but let us ensure that it is written down in law.

Baroness Hollins (CB): My Lords, I agree with the noble Baroness's points about trauma.

I will speak to Amendment 53. I credit my parliamentary scholar with writing it. His experience as a practicing psychiatrist confirms my experience of many years ago, before I retired as a psychiatrist. The code of practice is too often ignored or inconsistently applied, leaving vulnerable patients without essential safeguards. A thematic review of independently chaired reviews into the use of long-term segregation, which I oversaw for the previous Government, found that around a third of providers were not reviewing long-term segregation in line with the current code's requirements. Unfortunately, this problem extends beyond LTS and is evident across other settings, including acute care for individuals with personality disorders.

There is often a disconnect between what we assume guidance and policy achieve and the reality of front-line psychiatry. As the strategist Helmuth von Moltke said, no plan survives first contact with the enemy. In this context, no guidance survives contact with the complexities and pressures of day-to-day clinical care. That is precisely why guidance alone is not enough. Despite the requirement to have regard to the code, breaches frequently go unchallenged. Again and again, we see that statutory law, not just guidance, is needed to ensure compliance and protect patients' rights. Also, detained patients are not in a position to take a provider to court if their treatment is not in line with the code.

That is why this amendment seeks to introduce a statutory accountability mechanism for non-compliance with the code of practice. It would establish enforceable obligations on providers, ensuring that failure to adhere to the code carried real consequences, that compliance is not optional, and that hospitals would be held accountable when failure to follow the code resulted in harm or breaches of a patient's rights.

Legislation typically drives funding priorities. We have seen time and again that, where the law mandates action, resources follow. Section 2 of the Mental Health Act limits detention to 28 days. If this timeframe was merely guidance, would it be as strictly adhered to? Without a statutory requirement, would the same level of resource be dedicated to mental health tribunals? When the maximum detention period under Section 136 was reduced from 72 hours to 24 hours under the Policing and Crime Act 2017, we saw an immediate and dramatic change in practice across the country. If this had been guidance alone, I doubt we would have seen such swift and universal compliance.

Prior to the Mental Health Act 1983, patients could be detained indefinitely, with minimal safeguards and little external oversight. The introduction of statutory time limits and legal protections under the 1983 Act marked a turning point, contributing to the decline of long-term institutional care and supporting, importantly, the rise of community-based mental health services and rights-based community care. Without statutory backing, there is no guarantee that revisions to the code of practice will be implemented or enforced.

Baroness Barker (LD): My Lords, at this stage I do not wish to detain the House for very long. I will simply reflect on the fact that, when we debate mental health legislation, we are always trying to do three things: one is to update current thinking in legislative circles on what patients want and need; the second is to try to gently confront the sometimes conservative disposition of practitioners, by pushing for progress; and the third is that we try to avoid the situation where the biggest imperative for legal change is scandal and crisis when something goes wrong.

The amendments put forward by the noble Baroness, Lady Watkins, along with others proposed by noble Lords in this group, do that. They have reflected on what has been seen over the last 10 to 15 years in the patient experience and the most progressive aspects of professional development, in particular the growing acceptance that patients can have informed insight into their condition, even if they are at times very ill.

That is why a number of practitioners—admittedly in the face of some professional resistance in other quarters—have gone down the route of advance choice documents. The key thing I will say to the Minister is this: it is always difficult in mental health practice to come across evidence which is up to the same standards that we have in physical health—namely, randomised controlled trials. However, there have been randomised controlled trials of advance choice documents in a number of different places around the world, and in the United Kingdom. They may not always have been called advance choice documents—they may have had other names—but the findings from those trials say that these are cost-effective interventions.

However, we know that there will not be widespread uptake, that attention will not be paid to what people have put in those documents, and that they will not become standard practice unless they are in law. That is why the noble Baroness, Lady Watkins, was right to come back to try to put this in the Bill.

Baroness Merron (Lab): My Lords, I thank noble Lords for their contributions. I will take each amendment in turn.

The points on trauma were made extremely well and sensitively. Amendments 12 and 13 recognise the impact that childhood trauma can have on psychological well-being. This is indeed so. However, it does not apply to all patients, and that is why we do not wish to restrict decision-making by giving particular reference to this in legislation. I can point to Clause 8, which already requires decision-makers to consider the nature and degree of the disorder and all other circumstances, which could include childhood trauma. The definition of medical treatment under the Act is broad, as noble Lords have seen. Therefore, we expect it to cover interventions aimed at minimising distress and promoting psychological well-being. Additionally, NHS England's care standards require that in-patient care be trauma informed.

6.45 pm

Amendment 15 would apply stricter safeguards to the provision of artificial nutrition to patients detained under the Act. The noble Earl, Lord Howe, referred to

nasogastric feeding and the importance of combating its use. We recognise that artificial feeding in this way is extremely serious—this was spoken to by the noble Baroness, Lady Watkins—but it can sometimes be a life-saving treatment. As ever, clinical decision-making is key. There are already regulation-making powers in the Act that can be used to place treatment under different safeguards. However, I can say today that we are committed to engaging with stakeholders on whether revisions need to be made on this front, including in relation to artificial nutrition, and I hope that will be welcomed.

With regard to Amendment 37, there are systems in place for capturing and actioning service user feedback under the patient and carer race equality framework. While some may not always work effectively, our preference is to work to improve existing mechanisms. Dr Dash is currently reviewing the healthcare quality and safety landscape, including Healthwatch England and local Healthwatch organisations, the core responsibility of which is to collect feedback from service users to promote service improvement. We look forward to Dr Dash's recommendations, which we expect to bring forward improvements in this area.

The noble Earl, Lord Howe, referenced his view that the CQC does not take an individualised approach to monitoring and that, in practice, sadly, people could feel dismissed. Perhaps I could respond to that by saying that the CQC interviews thousands of patients as part of its monitoring of their MHA reports. I emphasise that this should be done in private, unless there is a good reason not to do so. I am sorry to hear of the feedback that the noble Earl referenced from patients who say that there have been occasions where the evidence that has been given may potentially be skewed. I can assure the noble Earl that I plan to raise this with the incoming Chief Inspector of Mental Health, Dr Chopra, when he is in post.

On this amendment, we do not feel that adding yet another mechanism, especially one that places greater burdens on independent mental health advocates, will achieve the desired intention. However, I confirm that we are committed to working with Blooming Change—I know that the noble Earl and other noble Lords have much engagement with Blooming Change—to inform our revisions to the code of practice and wider policy. We look forward to continuing to gain from its expertise.

I recognise noble Lords' concerns around advance choice documents. However, it is felt that accepting Amendments 14, 42 and 43 would reduce the flexibility in the Bill that exists to support patient choice and autonomy.

On Amendment 41, we continue to be of the view that the right to an advance choice document is unlikely to improve their uptake. However, I have listened carefully to the concerns raised today and in Committee and we agree that the Bill could go further to help ensure the success of advance choice documents, so I am pleased to announce that we are exploring how we can strengthen and clarify the duties on health commissioners relating to advance choice documents. We intend to bring forward a legislative amendment in the Commons.

I am also pleased to commit to set out in regulations the need for clinicians to include a plan to help a patient make an advance choice document wherever appropriate, as part of their statutory care and treatment plan. We believe that this will facilitate the uptake of advance choice documents, which I know noble Lords are keen to see. More details on the intended coverage of the care and treatment plan can be found in the policy paper that I circulated before Report.

I turn to Amendment 53. The code of practice offers statutory guidance for functions under the Act, with a legally binding duty to follow it unless there are strong reasons not to do so. I know that noble Lords understand that there will be cases where departing from the code is necessary to achieve the best outcome; this is the advantage of guidance over legislation. However, such cases should be rare and strongly justified. CQC monitors the implementation of the code of practice and raises concerns through its monitoring reports and inspections. Breaches of CQC regulations due to departures from the code will affect a provider's rating. Where a patient's rights or safeguards are breached resulting in harm, remedial actions—including legal and disciplinary measures—are in place, regardless of whether the breach stems from departure from the code.

The noble Baroness, Lady Hollins, spoke to me earlier about ensuring compliance with the code of practice, which is a point well made. In response, I can say that the code sets out who must have regard to the code. Under current arrangements under the Health and Social Care Act 2008, registered providers must ensure that staff have appropriate training to carry out their role. Looking to the future, the department will work with NHSE, Social Work England and other partners to develop appropriate training for staff on these reforms. Once the code of practice has been updated, professionals working under the Act will be required to undergo training to maintain their competence and awareness of the Act. I emphasise that failure to have regard to the code may give rise to legal challenges, as noble Lords are aware. Courts will scrutinise reasons for departing from the code to ensure that there is sufficiently convincing justification in the circumstances that have led to this departure.

I turn finally to Amendment 63. This would significantly change the tribunal's role, which focuses currently on reviewing detention, not treatment decisions. The previous Administration consulted on a similar recommendation from the independent review, and noble Lords may recall that serious concerns were raised. The tribunal is not designed to deal with complex treatment disputes, which need specialist input and established therapeutic relationships between the patient and clinician. However, the emphasis on therapeutic benefit in the revised detention criteria will see that the tribunal pays particular attention to the patient's care and treatment and whether it is proving effective, as part of discharge decisions. For these reasons, I hope that noble Lords will not press their amendments.

Earl Howe (Con): My Lords, I am grateful to all noble Lords who have spoken so powerfully in support of the amendments in this group. I also thank the Minister for her full reply. In the interests of time, I will not cover all the issues at length; however, I am

[Earl Howe]
grateful to the Minister for her welcome assurances on my Amendment 41. It is excellent news that the Government will be taking forward my plea to strengthen the provisions around advance choice documents when the Bill reaches the other place.

On nasogastric feeding, I was glad to hear that discussions would be taken forward with the professions in the mental health sector. I hope that the Law Society's concerns will be taken into account in those discussions.

Finally, I must express some disappointment at the Minister's reply about the idea of a debriefing process for patients after leaving hospital. We cannot be sure that the work of Dr Dash will deliver progress in this area, and I still feel that the case I tried to put is strong. I will reflect on what the Minister said, but I reserve the right to test the opinion of the House when Amendment 37 is reached. For now, I beg leave to withdraw Amendment 12.

Amendment 12 withdrawn.

Amendment 13 not moved.

Clause 11: Making treatment decisions

Amendment 14

Tabled by ***Baroness Watkins of Tavistock***

14: Clause 11, page 17, leave out line 39 and insert "statements set out in an advance choice document)."

Member's explanatory statement

This amendment seeks to align the Mental Health Act with the existing best practice on providing advance choice documents.

Baroness Watkins of Tavistock (CB): Amendment 14 is not moved, but I express my thanks to the Minister for her work on advance choice documents.

Amendment 14 not moved.

Clause 15: Electro-convulsive therapy etc

Amendment 15 not moved.

Clause 18: Urgent electro-convulsive therapy etc

Amendment 16

Moved by ***Baroness Blake of Leeds***

16: Clause 18, page 24, line 31, leave out from beginning to end of line 2 on page 25 and insert—

"(2) The treatment may be given to a patient who has capacity to consent to the treatment only if—

(a) the patient has consented to it, or

(b) the patient has not consented but a certificate has been given by a second opinion appointed doctor under subsection (4).

(3) The treatment may be given to a patient who lacks capacity to consent to the treatment only if—

(a) the giving of the treatment would not conflict with any of the following—

(i) a valid and applicable advance decision, or

(ii) a decision of a donee or deputy or the Court of Protection, or

(b) the giving of the treatment would conflict with such a decision but a certificate has been given by a second opinion appointed doctor under subsection (5)."

Member's explanatory statement

This amendment clarifies that the requirement for a certificate by a second opinion appointed doctor does not apply to urgent electro-convulsive therapy if: (1) the patient consents, or (2) the patient lacks capacity but the treatment does not conflict with an advance decision etc.

Baroness in Waiting/Government Whip (Baroness Blake of Leeds) (Lab): My Lords, I will move Amendment 16 and speak to all the amendments in this group in the name of my noble friend the Minister. I speak first to Amendments 17, 18, 19, 21, 36, 39, 45, 64, 65, 66 and 67, which follow recommendations made by the Delegated Powers and Regulatory Reform Committee and the amendments tabled by the noble Lord, Lord Scriven, in Committee.

Amendments 17, 18, 19, 21, 36, 39 and 45 remove the Henry VIII power from the Bill that allowed the Government to set out in regulations the exceptional circumstances where a second opinion appointed doctor's certificate is not necessary to administer urgent and compulsory electroconvulsive therapy, and instead sets out these limited circumstances in the Bill. These situations arise when the regulator determines that there are exceptional circumstances delaying the appointment of a second opinion doctor and the treating clinician deems urgent electroconvulsive therapy necessary to save the patient's life. In recognition of the seriousness of the situation, the new process will also ensure that these exceptional cases are monitored and reported on by the regulator.

Amendments 64, 65, 66 and 67 ensure that, where regulations are made under the power to make consequential provision to amend or repeal primary legislation set out in Clause 52, they will be subject to the affirmative scrutiny procedure. Amendment 65 extends this to Clause 53, which confers equivalent power on Welsh Ministers in areas of devolved competence.

I turn back to Amendment 16, which addresses concerns from stakeholders that the Bill was not explicit on whether urgent electroconvulsive therapy is permitted when the person is consenting or lacks capacity but treatment is not in conflict with a decision to refuse it—as is currently the case under the Act. This amendment makes clear that treatment in these scenarios is still permitted, addressing any possible risk of misinterpretation.

On Amendments 20 and 22, the Bill as introduced expressly permits remote assessment by the second opinion doctor's service only for urgent compulsory electroconvulsive therapy. These amendments clarify that remote interview and examination are permitted for all second opinions provided by people appointed by the regulator. Remote interview and examination may be used only when deemed appropriate. If not, these functions must be conducted in person. Specific guidance will be provided in the code of practice.

Turning to Amendment 26, approved mental health professionals have raised concerns that the requirement for the nominated person to sign an appointment instrument in the presence of a health or care professional "witness" could result in delays to having a nominated

person in place, which could undermine the safeguard and place geographical restrictions on who could take the role. This could mean, for example, that patients who are placed in out-of-area hospitals have greater delays in appointing a nominated person.

7 pm

Amendment 26 therefore removes the requirement for the nominated person to sign the instrument in the presence of the witness while maintaining the safeguards of the witnessing process. The witness must sign a statement confirming that they have no reason to believe

"the nominated person lacks capacity or competence … that any fraud or undue pressure has"

occurred,

"or that the person is unsuitable".

They are expected to meet with the nominated person to ascertain this. In most cases, this is expected to be done in person, but the amendment allows for the signature to be done remotely if appropriate.

Further guidance will be provided in the code of practice and, as my noble friend the Minister announced, we are committed to establishing an expert task force to support the development of the statutory code of practice to provide clear guidance for professionals involved in the nominated persons appointment process for children and young people. This would include the witness process. For these reasons, I hope noble Lords will feel able to support these amendments.

Lord Scriven (LD): My Lords, I thank the noble Baroness for detailing very clearly the Government's amendments. I also thank the Minister, who I see in her place, for, again, a very collaborative approach and for, on this occasion, implementing exactly not just what was in my previous amendment, so ably moved by my noble friend Lady Tyler, but what came from the Delegated Powers and Regulatory Reform Committee.

On the use of ECT, the powers in the government amendments before the House mean that the balance is absolutely correct on not having the second doctor's signature and consent, as well as on the need to save life and the use of ECT. I thank the Government sincerely for not just listening but acting on the concerns that were around.

Earl Howe (Con): My Lords, the House will be grateful to the Minister for these government amendments, which, as the noble Baroness made clear, cover two principal policy issues. Accordingly, I have two sets of queries.

On the changes for the rules for authorising electroconvulsive therapy, I am sure it is not the Government's intention in any way to water down the safeguards surrounding the administering of ECT. However, in relation to Amendments 16 and 17, taken together, can the Minister reassure me? The Bill, as modified by the proposed amendments, will posit that there could be circumstances in which a patient who has the capacity to consent to ECT but who has not consented to it could nevertheless find their refusal to treatment overridden by the decision of a single treating clinician. Even in a situation where the judgment of the clinician was that ECT was necessary to save the patient's life, it seems to me a significant change from the current rule whereby the decision of a second opinion appointed doctor is required in all cases where it is proposed to administer ECT to a non-consenting patient who has the capacity to consent.

Amendment 17 makes it clear that the regulatory authority—the CQC, in other words—may give permission for ECT to be administered only on the say-so of a single doctor where a SOAD is not available and "exceptional circumstances" apply. I will not ask the Minister to define what "exceptional circumstances" might consist of, but it is to be assumed that a primary example of such circumstances might be when time was of the essence and no SOAD could be located soon enough to avoid exacerbating the risk of harm or death.

So my questions are, firstly, has this proposed change been prompted by a general awareness across the mental health sector that the availability of SOADs can frequently prove a problem in circumstances where urgent decisions are needed? In other words, to put it bluntly, are we being asked to change the law because of habitual shortcomings in NHS communication arrangements? I would be concerned if that were the case.

Secondly, what guidance, if any, will the CQC formulate for itself to ensure that, when its decision is sought to temporarily waive the requirement for a SOAD, it will not do so just on the basis of a SOAD being unavailable? Will it also commit itself to a standard procedure whereby it will seek at least some background detail from the treating clinician of the case before him or her, such as the reasons why they consider that administering ECT to that particular patient carries particular urgency? In other words, can we be reassured that the treating clinician's opinion will be subject to at least a modicum of testing and cross-questioning before the CQC issues the go-ahead for ECT to be administered? I hope so, because anything short of that could turn into a tick-box exercise.

The other government amendment on which I would appreciate further clarity is Amendment 26, which

"changes the process for appointing a nominated person".

One of the changes proposed is that the various statements and signatures required for appointing the nominated person no longer have to be contained in the same instrument. The other is that the nominated person's signature no longer has to be witnessed. I was grateful for the Minister's explanation, but it implies that the written instrument that appoints the nominated person and is signed by the patient in the presence of a witness can be executed without the nominated person themselves being in the room, or indeed anywhere near. At the moment, the Bill says:

"The instrument appointing the nominated person must … contain a statement, signed by the nominated person in the presence of"

the same person who witnesses the signature of the patient.

I previously assumed that the reason for that provision was the responsibility that the Bill places on the witness—quite a serious responsibility—to ensure, as far as possible, that the nominated person, whoever they are, is a fit and proper person to act in that capacity. It

[Earl Howe]
would appear now, with this amendment, that there is no need for the witness even to clap eyes on the individual who is nominated. How can that be right? Without at least meeting the nominated person, how can any self-respecting witness certify, hand on heart, that, in the words of the Bill, they have

"no reason to think that the nominated person lacks capacity or competence to act as a nominated person,"

or that they have

"no reason to think that the nominated person is unsuitable to act as a nominated person".

Are they simply meant to take the patient's word for it?

This alteration in the wording raises all sorts of question marks in my mind, given the concerns expressed by noble Lords in Committee about misplaced loyalty towards a particular individual, a naivety on the part of a child or young person, or even some degree of psychological manipulation of a young person—for example, someone who makes it their business to set a child against their own parents.

In Committee, the Minister herself emphasised the need for the law to prevent exploitation and manipulation. While I did not at the time think that her response was completely reassuring, I saw it at least as an acknowledgement that the role of the witness could not be fulfilled properly without some sort of contact with the nominated person. Was I right or wrong on that? It would be helpful if the Minister could explain how my misgivings in this area, about the way in which the nominated person procedure comes to be implemented in practice, might be allayed.

Baroness Blake of Leeds (Lab): My Lords, I thank the noble Lord, Lord Scriven, for his comments and express my thanks also for the many contributions made by noble Lords around the House.

The noble Earl, Lord Howe, asked some searching questions. I think the main thrust of his comments was to look for reassurance that due diligence will be gone into in all of the areas that he raises. I am not sure that I can answer every line in detail, but I want to reassure him in particular about the nominated person question, which I know has caused him enormous concern.

In addition to what I have said, I emphasise that there is no intention at all to water down the safeguard, and that Amendment 26 will make sure that patients get access to a nominated person quicker, along with all the rights and powers that entails, meaning that safeguards provided by the role will not be delayed. That is the crucial point that we have to factor in as to why these amendments are deemed necessary. As he quite rightly says, this is particularly important for patients and those who may be subject to out-of-area placements.

The change that we are bringing in is that the nominated person's signature does not need to be witnessed in person. None of the safeguarding checks is changed in any way by this. In answer to the noble Lord's concern, we would expect that, in the majority of cases, the witness will still meet the nominated person face to face. In exceptional circumstances, where this is not possible, we believe that it is better to be able to appoint a nominated person, subject to all the appropriate safeguarding checks, than to have to wait until a person can have their signature witnessed.

A second opinion doctor is not currently required for urgent and compulsory electroconvulsive therapy; this is new under the Bill. I need to emphasise this point. What the amendment does is sets out the exceptional circumstances where a second opinion appointed doctor—sorry, it is a bit of a mouthful—is not required. I hope that gives some clarification.

We have to make sure that these are all taken in the round. I reassure the noble Earl, Lord Howe, and noble Lords across the Chamber, that many of these are regarded to be due to exceptional circumstances, where time is of the essence.

As to whether some of these provisions are based on failure, it is from learned experience and bringing together everyone who has a view to make sure that everything we bring forward is in the best interests of the patient. That is the crucial thing. This is where the detailed work will be done under the code of practice, bringing together all the different parties in a measured way. It will take a few months to do this. That is critical, so that we can all be reassured that the processes are brought into play.

I can understand the concern about making sure that communication is there in situations of stress, but I believe that these amendments are designed to address this issue, with, as I have said, the patient's interest absolutely in the forefront. There will be opportunities as the code of practice is put together for us to make sure that our endeavours are followed, bringing the best opinion together with the best interest of the patients.

Amendment 16 agreed.

Amendments 17 to 21

Moved by ***Baroness Blake of Leeds***

17: Clause 18, page 26, line 4, at end insert—

"62ZAA Life-saving section 62ZA treatment: modified procedure in exceptional circumstances

(1) Where—

(a) a request is made to the regulatory authority under section 56B for the appointment of a second opinion doctor to perform the function of giving a certificate under section 62ZA in relation to any treatment, and

(b) the regulatory authority determines that there are exceptional circumstances which mean that there will be a delay in appointing a second opinion doctor,

a function of a second opinion appointed doctor under section 62ZA in relation to the giving of a certificate containing a statement under subsection (4)(c)(i) or (5)(c)(i) of that section may be performed, instead, by the approved clinician in charge of that treatment.

(2) But no treatment may be given in reliance on a certificate given by the approved clinician by virtue of subsection (1) once the second opinion doctor has been appointed under section 56B.

(3) Each time a patient is given treatment in reliance on a certificate given by the approved clinician by virtue of subsection (1), the managers of the hospital or registered

establishment in which the treatment is given must notify the regulatory authority of that treatment as soon as reasonably practicable.

(4) The regulatory authority's annual report under section 120D must include—

(a) a statement of how many times the regulatory authority has made a determination under subsection (1)(b) in the period to which the report relates and a summary of the reasons why any determinations have been made, and

(b) a statement of how many times during that period treatment has been given in reliance on a certificate issued by virtue of subsection (1)."

Member's explanatory statement

Where exceptional circumstances mean that a second opinion appointed doctor is not available to authorise life-saving electro-convulsive therapy, this amendment would allow the approved clinician to do so. The amendment replaces the regulation-making power currently in new section 62ZB(1).

18: Clause 18, page 26, line 6, leave out from beginning to end of line 10

Member's explanatory statement

This is consequential on my amendment to clause 18, page 26, line 4.

19: Clause 18, page 26, line 17, leave out "or by virtue of regulations under subsection (1)"

Member's explanatory statement

This is consequential on my amendment to clause 18, page 26, line 4.

20: Clause 18, page 26, line 32, leave out subsection (7)

Member's explanatory statement

This amendment leaves out text that is replaced by my new clause inserted after clause 18.

21: Clause 18, page 27, line 15, leave out subsection (8)

Member's explanatory statement

This is consequential on my amendment to clause 18, page 26, line 4.

Amendments 17 to 21 agreed.

Amendment 22

Moved by ***Baroness Blake of Leeds***

22: After Clause 18, insert the following new Clause—

"Remote assessment for treatment

(1) Section 119 (practitioners approved for Part 4 and section 118) is amended as follows.

(2) In subsection (2)(a), for the first "and" substitute "or".

(3) After subsection (2) insert—

"(2A) A person authorised by subsection (2) to carry out an interview or examination may, to the extent that they consider appropriate, carry it out—

(a) by live audio link, or

(b) by live video link."

(4) In subsection (3), before the definition of "regulated establishment" insert—

""live audio link" , in relation to the carrying out of an interview or examination, means a live telephone link or other arrangement which enables the patient and the person carrying out the interview or examination to hear one another;

"live video link" , in relation to the carrying out of an interview or examination, means a live television link or other arrangement which enables the patient and the person carrying out the interview or examination to see and hear one another;"."

Member's explanatory statement

This new clause would enable remote assessments to be carried out by certain people for the purpose of non-urgent electro-convulsive therapy and certain other treatments. It also replaces clause 18(7) which makes equivalent provision for urgent treatment.

Amendment 22 agreed.

Amendment 23 not moved.

7.15 pm

Schedule 2: Nominated persons

Amendment 24

Moved by ***Baroness Berridge***

24: Schedule 2, page 72, line 24, leave out "county court" and insert "Mental Health Act tribunal"

Baroness Berridge (Con): My Lords, I will be brief, bearing in mind the time. I have tabled these amendments again on Report, regarding the appropriate tribunal to hear the nominated person's claims. I am very appreciative of the information given earlier to the noble and learned Baroness, Lady Butler-Sloss, that parents would be able to go to the tribunal. I am also very grateful for the letter that the Minister wrote to me.

The only point on which I wish to have clarification is that there is a difference between the Mental Health Act tribunal and the county court in relation to funding. A parent who goes to the county court will be subject to means testing for Legal Services Commission funding. That is not the case for the Mental Health Act tribunal. So, bearing in mind the importance of the county court to parents, will the Minister outline whether there are any proposals to enable parents to access Legal Services Commission funding?

Lord Meston (CB): I am grateful to the noble Baroness for bringing this point up again. I mentioned it in Committee. The reference to the county court, currently in Schedule 2 to the Bill, is the only place in this jurisdiction where the county court is given anything to do. It seems to me now to be an anomaly and an anachronism. It is simply carrying forward the use of the county court from the 1959 Act and the 1983 Act, which provided for that court to deal with applications to displace nearest relatives.

I do not believe that, if the mental health legislation was now being started afresh, it would refer to the county courts. The county court is, in any event, now greatly overburdened, but that is not the only reason to replace it. A mental health tribunal, or indeed the Court of Protection, would be better equipped to deal with these cases, having specialist expertise and judiciary.

Baroness Butler-Sloss (CB): My Lords, I support this amendment and, in particular, what the noble Lord, Lord Meston, has said. He has considerable experience of the county court, which I do not have, excepting when I used to appear before it.

What concerns me is that, if a case is sent to the county court, to a judge who is not a family judge, there will be considerable difficulties for that judge. I support the idea that it should be either the mental health tribunal or—as I would prefer, and as the noble Lord, Lord Meston, has suggested—the Court of Protection. The judges of the Court of Protection are judges of the

[Baroness Butler-Sloss]
High Court, Family Division, of which I was president. That would be the right court. If it is said by the Government that they are not prepared to move on this issue, and I suspect they might not be, could they at least put in the court code of practice that, if it is sent to the county court, it will be dealt with by a family judge in the county court? The county court sits also as a family court. That would at least ameliorate the situation.

Earl Howe (Con): My Lords, I will speak briefly to the amendments in this group tabled by my noble friend Lady Berridge, supported by the noble Lord, Lord Meston, and the noble and learned Baroness, Lady Butler-Sloss, whose last suggestion I hope will be listened to by the Minister.

I must commend my noble friend for her tenacity with this issue. As she has outlined, there is a significant concern that the use of the county courts to decide on matters pertaining to the termination of nominated persons is not the most appropriate process. I do hope that the Minister will give my noble friend words to her comfort.

Baroness Merron (Lab): My Lords, I thank the noble Baroness, Lady Berridge, for her Amendments 24, 28 and 35. They would mean that the mental health tribunal, rather than the county court, handled the termination of appointment of the nominated person. The county court already has a role in displacing the nearest relative. It has the expertise, procedural tools and legal framework to handle sensitive disputes involving external parties, such as conflicts of interest or allegations of abuse. The First-tier Tribunal (Mental Health) in England and the Mental Health Review Tribunal for Wales are focused on reviewing detention under the Mental Health Act. This would add an additional burden on the tribunal, risking undermining its core function and delaying detention reviews.

The noble Baroness, Lady Berridge, raised the issue of legal aid. County court mental health cases are largely limited to applications for the displacement of a nearest relative. Legal aid is currently available to a person seeking the displacement of the nearest relative, except where the person bringing that application is doing so in a professional capacity and to the nearest relative themselves. That would also apply for the nominated person, which will replace the nearest relative.

Legal representation is available where the applicant meets the means test, unless they are under 18, and the relevant merits criteria. If there are any further points of clarification, I will be pleased to make them to any noble Lords who have raised points today, including the noble Baroness.

As we do not feel that the mental health tribunal is the right place for what I was referring to before I went on to legal aid, I ask the noble Baroness to withdraw the amendment.

Baroness Butler-Sloss (CB): Does the Minister know which judge deals with these issues in the county court? The point that I made as a possibility was that it should be one of the family judges. She will know that circuit judges do both family and civil, but generally there is a designated family judge and a designated civil judge. I am just hoping something can be said so that it gets at least to a judge like the noble Lord, Lord Meston, who would understand what was going on.

Baroness Merron (Lab): The noble Lord, Lord Meston, does indeed know what is going on—I agree. I cannot answer the noble and learned Baroness's question directly, but I would be pleased to look into that point in order to do so. Maybe the noble Lord could help me.

Lord Meston (CB): Perhaps I can relieve the Minister. I can tell her who has to deal with it: it is whoever is available at the time, and these applications tend to come in really quite urgently.

Baroness Merron (Lab): I am most grateful to the noble Lord.

Baroness Berridge (Con): I am grateful for the Minister's comments, the reassurance she has given and the details she will provide me with, so I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendment 25 not moved.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, I must inform the House that if Amendment 26 is agreed to, I will not be able to call Amendment 27 by reason of pre-emption.

Amendment 26

Moved by ***Baroness Merron***

26: Schedule 2, page 74, line 27, leave out from "writing" to end of line 19 on page 75 and insert "signed by the patient in the presence of a health or care professional or independent mental health advocate ("the witness"),

(c) the nominated person has signed a statement that they—

(i) meet the age requirement (see paragraph 2(2)), and

(ii) agree to act as the nominated person, and

(d) the witness has signed a statement that—

(i) the instrument appointing the nominated person was signed by the patient in the presence of the witness,

(ii) the witness has no reason to think that the patient lacks capacity or competence to make the appointment,

(iii) the witness has no reason to think that the nominated person lacks capacity or competence to act as a nominated person,

(iv) the witness has no reason to think that any fraud or undue pressure has been used to induce the patient to make the appointment, and

(v) the witness has no reason to think that the nominated person is unsuitable to act as a nominated person."

Member's explanatory statement

This changes the process for appointing a nominated person. It removes the requirement for the nominated person's signature to be witnessed and the various statements and signatures no longer have to be contained in the same instrument.

Amendment 26 agreed.

Amendments 27 and 28 not moved.

Amendments 29 to 32

Moved by ***Baroness Merron***

29: Schedule 2, page 77, line 27, leave out "16" and insert "18"

Member's explanatory statement

This and my amendments to paragraph 10 of new Schedule 1A ensure that where a nominated person is appointed for a patient who is aged 16 or 17 and for whom a local authority has parental responsibility, the local authority is appointed as the nominated person.

30: Schedule 2, page 78, line 5, leave out "under 16" and insert "16 or 17"

Member's explanatory statement

See the explanatory statement for my amendment to Schedule 2, page 77, line 27.

31: Schedule 2, page 78, line 6, leave out sub-paragraph (2) and insert—

"(2) If a local authority has parental responsibility for the relevant patient, the approved mental health professional must appoint that local authority.

(2A) If no local authority has parental responsibility for the relevant patient but the relevant patient has a competent deputy who is willing to act as the nominated person, the approved mental health professional must appoint the deputy."

Member's explanatory statement

See the explanatory statement for my amendment to Schedule 2, page 77, line 27.

32: Schedule 2, page 78, line 14, leave out "other case," and insert "case in which sub-paragraphs (2) and (3) do not identify who is to be appointed"

Member's explanatory statement

See the explanatory statement for my amendment to Schedule 2, page 77, line 27.

Amendments 29 to 32 agreed.

Amendment 33

Moved by ***Baroness Merron***

33: Schedule 2, page 78, line 23, at end insert—

"10A "(1) This paragraph applies where an approved mental health professional is deciding who to appoint as a nominated person for a relevant patient who is aged under 16.

(2) If a local authority has parental responsibility for the relevant patient, the approved mental health professional must appoint that local authority.

(3) If no local authority has parental responsibility for the relevant patient but there are one or more other persons who have parental responsibility and who are willing to act as the nominated person, the approved mental health professional must appoint one of them.

(4) In any case in which sub-paragraphs (2) and (3) do not identify who is to be appointed, the approved mental health professional must, in deciding who to appoint, take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable."

Member's explanatory statement

This largely replicates the effect of existing paragraph 10 of new Schedule 1A but ensures that where a nominated person is appointed for a patient who is aged under 16 and for whom a local authority has parental responsibility, the local authority is appointed as the nominated person.

Amendment 34 (to Amendment 33)

Moved by ***Baroness Berridge***

34: Leave out sub-paragraph (3) and insert—

"(3) Where sub-paragraph (2) does not apply, the approved mental health professional must appoint as a nominated person—

(a) a guardian who has been appointed for the relevant patient,

(b) a person who is named in a child arrangements order, as defined by section 8 of the Children Act 1989, as a person with whom the relevant patient is to live, or

(c) a person who has parental responsibility for the relevant patient.

(3A) In this paragraph "guardian" includes a special guardian within the meaning of the Children Act 1989 but does not include a guardian under section 7 of that Act.

(3B) Where there is more than one person identified as a potential nominated person in sub-paragraph (3)(a), (b) or (c) then the approved mental health professional must in deciding who to appoint—

(a) take into account the relevant patient's past and present wishes and feelings so far as reasonably ascertainable, or

(b) where it has not been possible to ascertain the relevant patient's past and present wishes, preference must be given to the eldest person."

Baroness Berridge (Con): My Lords, I have listened carefully to the Minister's reasoning, but I am sure it will not be a surprise to her that there is now a matter of disagreement, so I wish to test the opinion of the House.

7.24 pm

Division on Amendment 34 (to Amendment 33)

Contents 218; Not-Contents 143.

Amendment 34 (to Amendment 33) agreed.

Division No. 3

CONTENTS

Aberdare, L.
Addington, L.
Agnew of Oulton, L.
Altrincham, L.
Anelay of St Johns, B.
Ashcombe, L.
Bailey of Paddington, L.
Banner, L.
Barran, B.
Bates, L.
Batters, B.
Beith, L.
Bellingham, L.
Benjamin, B.
Berridge, B.
Blackwood of North Oxford, B.
Blencathra, L.
Bonham-Carter of Yarnbury, B.
Booth, L.
Booth-Smith, L.
Borwick, L.
Bourne of Aberystwyth, L.
Bowles of Berkhamsted, B.
Brady of Altrincham, L.
Bridgeman, V.
Brinton, B.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Bruce of Bennachie, L.
Butler-Sloss, B.
Caine, L.
Carrington of Fulham, L.
Cash, B.
Clement-Jones, L.
Coffey, B.
Colgrain, L.
Courtown, E. [Teller]
Crathorne, L.

Davies of Gower, L.
De Mauley, L.
Deben, L.
Dholakia, L.
Dodds of Duncairn, L.
Doocey, B.
Duncan of Springbank, L.
Dunlop, L.
Effingham, E.
Elliott of Mickle Fell, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Guisborough, L.
Evans of Rainow, L.
Falkner of Margravine, B.
Featherstone, B.
Fink, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Bath, L.
Foster of Oxton, B.
Fox of Buckley, B.
Fox, L.
Freeman of Steventon, B.
Frost, L.
Fuller, L.
Garden of Frognal, B.
Garnier, L.
Gascoigne, L.
German, L.
Goddard of Stockport, L.
Gohir, B.
Gold, L.
Goldie, B.
Goodman of Wycombe, L.
Goschen, V.
Grayling, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hamwee, B.
Harris of Richmond, B.
Hayward, L.
Helic, B.
Henley, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Horam, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Humphreys, B.
Hunt of Wirral, L.
Hussein-Ece, B.
Jackson of Peterborough, L.
Jamieson, L.
Janke, B.
Jenkin of Kennington, B.
Jopling, L.
Kamall, L.
Keen of Elie, L.
Kempsell, L.
Kirkhope of Harrogate, L.
Kramer, B.
Laing of Elderslie, B.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lucas, L.
Ludford, B.
Maclean of Redditch, B.
Magan of Castletown, L.
Manzoor, B.
Markham, L.
Marks of Henley-on-Thames, L.
Maude of Horsham, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
Mendoza, L.
Meston, L.
Meyer, B.
Minto, E.
Mobarik, B.
Mohammed of Tinsley, L.
Morris of Bolton, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Newby, L.
Newlove, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Northover, B.
Norton of Louth, L.
Oates, L.
Offord of Garvel, L.
O'Neill of Bexley, B.
Owen of Alderley Edge, B.
Pack, L.
Paddick, L.
Palmer of Childs Hill, L.
Parkinson of Whitley Bay, L.
Parminter, B.
Penn, B.
Pickles, L.
Pidding, B.
Pidgeon, B.
Pinnock, B.
Porter of Spalding, L.
Purvis of Tweed, L.
Randall of Uxbridge, L.
Ranger of Northwood, L.
Rawlings, B.
Razzall, L.
Redfern, B.
Remnant, L.
Robathan, L.
Roborough, L.
Russell, E.
Sanderson of Welton, B.
Sandhurst, L.
Sassoon, L.
Scott of Bybrook, B.
Scriven, L.
Seccombe, B.
Shackleton of Belgravia, B.
Sharkey, L.
Sharma, L.
Sharpe of Epsom, L.
Sheehan, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Smith of Llanfaes, B.
Smith of Newnham, B.
Stedman-Scott, B.
Stern of Brentford, L.
Stoneham of Droxford, L.
Strasburger, L.
Strathcarron, L.
Sugg, B.
Suttie, B.
Swire, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Thomas of Winchester, B.
Thornhill, B.
Thurso, V.
Tope, L.
True, L.
Tyler of Enfield, B.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Walmsley, B.
Watkins of Tavistock, B.
Weir of Ballyholme, L.
Willetts, L.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Acton, L.
Young of Cookham, L.
Younger of Leckie, V.

NOT CONTENTS

Alexander of Cleveden, B.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Austin of Dudley, L.
Bach, L.
Barber of Ainsdale, L.
Bassam of Brighton, L.
Beamish, L.
Berger, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bousted, B.
Bradley, L.
Brennan of Canton, L.
Brown of Silvertown, B.
Browne of Ladyton, L.
Caine of Kentish Town, B.
Campbell-Savours, L.
Carberry of Muswell Hill, B.
Carlile of Berriew, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Coaker, L.
Collins of Highbury, L.
Cryer, L.
Curran, B.
Davies of Brixton, L.
Debbonaire, B.
Donoughue, L.
Drake, B.
Dubs, L.
Eatwell, L.
Elliott of Whitburn Bay, B.
Evans of Sealand, L.
Faulkner of Worcester, L.
Golding, B.
Goldsmith, L.
Goudie, B.
Gray of Tottenham, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hain, L.
Hannett of Everton, L.
Hanson of Flint, L.
Hanworth, V.
Harris of Haringey, L.
Haskel, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy of Richmond Hill, L.
Hendy, L.
Hermer, L.
Hodge of Barking, B.
Hollick, L.
Hughes of Stretford, B.
Hunt of Kings Heath, L.
Jones of Penybont, L.
Jones of Whitchurch, B.
Jones, L.
Katz, L.
Keeley, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kilclooney, L.
Kingsmill, B.
Kinnock, L.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Layard, L.
Lemos, L.
Lennie, L.
Leong, L.
Levitt, B.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Livermore, L.
Longfield, B.
Mattinson, B.
McCabe, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Moraes, L. [Teller]
Morgan of Drefelin, B.
Morgan, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
O'Grady of Upper Holloway, B.
Osamor, B.
Pitkeathley of Camden Town, L.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Primarolo, B.
Rafferty, B.
Ramsay of Cartvale, B.
Ramsey of Wall Heath, B.
Raval, L.
Rees of Easton, L.
Reid of Cardowan, L.
Rook, L.
Sahota, L.
Sherlock, B.
Sikka, L.
Smith of Basildon, B.
Smith of Cluny, B.

Snape, L.
Spellar, L.
Stansgate, V.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Timpson, L.
Touhig, L.
Tunnicliffe, L.
Twycross, B.
Uddin, B.
Vallance of Balham, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wilson of Sedgefield, L.
Winston, L.
Winterton of Doncaster, B.
Young of Norwood Green, L.
Young of Old Scone, B.
Young of Old Windsor, L.

Amendment 33, as amended, agreed.

7.35 pm

Amendment 35 not moved.

Clause 30: References to tribunal

Amendment 36

Moved by ***Baroness Merron***

36: Clause 30, page 42, line 1, leave out "50" and insert "36"

Member's explanatory statement

This is consequential on my amendment to leave out clause 50.

Amendment 36 agreed.

Amendment 37

Moved by ***Earl Howe***

37: After Clause 33, insert the following new Clause—

"Ascertaining and learning from patients' experiences of hospital treatment

After section 23 of the Mental Health Act 1983 (discharge of patients) insert—

"23A Ascertaining and learning from patients' experiences of hospital treatment

(1) A patient who has been detained under this Part of this Act must, within 30 days of their discharge, be offered a consultation with an independent mental health advocate to review their experiences of hospital treatment.

(2) A report from any consultation undertaken pursuant to subsection (1) shall be produced by the independent mental health advocate in partnership with the patient.

(3) The report referred to in subsection (2) shall be provided to the managers of the hospital within 14 days of its completion.

(4) The managers of the hospital shall publish each year a report setting out what they have learned from patients' experiences at the hospital, and the actions they have taken.""

Member's explanatory statement

This amendment would mandate the de-briefing of mental health patients after they have left hospital.

Earl Howe (Con): My Lords, I listened carefully to the Minister's reply to the proposal that I made to give mental health patients an automatic opportunity to avail of a debriefing process after leaving hospital, in the interests of patient empowerment and greater transparency for the system generally. I am afraid that I nevertheless wish to test the opinion of the House.

7.36 pm

Division on Amendment 37

Contents 209; Not-Contents 143.

Amendment 37 agreed.

Division No. 4

CONTENTS

Aberdare, L.
Addington, L.
Agnew of Oulton, L.
Altrincham, L.
Anelay of St Johns, B.
Ashcombe, L.
Bailey of Paddington, L.
Banner, L.
Barran, B.
Bates, L.
Batters, B.
Beith, L.
Bellingham, L.
Benjamin, B.
Berridge, B.
Blackwood of North Oxford, B.
Blencathra, L.
Bonham-Carter of Yarnbury, B.
Booth, L.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Bowles of Berkhamsted, B.
Brady of Altrincham, L.
Brinton, B.
Browne of Belmont, L.
Browning, B.
Brownlow of Shurlock Row, L.
Butler-Sloss, B.
Caine, L.
Carrington of Fulham, L.
Cash, B.
Clement-Jones, L.
Coffey, B.
Colgrain, L.
Courtown, E. [Teller]
Crathorne, L.
Cromwell, L.
Davies of Gower, L.
De Mauley, L.
Deben, L.
Dholakia, L.
Dodds of Duncairn, L.
Doocey, B.
Duncan of Springbank, L.
Dunlop, L.
Effingham, E.
Elliott of Ballinamallard, L.
Elliott of Mickle Fell, L.
Empey, L.
Evans of Bowes Park, B.
Evans of Guisborough, L.
Evans of Rainow, L.
Featherstone, B.
Fink, L.
Finn, B.
Fleet, B.
Fookes, B.
Forsyth of Drumlean, L.
Foster of Aghadrumsee, B.
Foster of Bath, L.
Foster of Oxton, B.
Fox, L.
Freeman of Steventon, B.
Frost, L.
Fuller, L.
Garden of Frognal, B.
Garnier, L.
Gascoigne, L.
German, L.
Goddard of Stockport, L.
Gohir, B.
Gold, L.
Goldie, B.
Goodman of Wycombe, L.
Goschen, V.
Grayling, L.
Greenway, L.
Grender, B.
Grey-Thompson, B.
Grimstone of Boscobel, L.
Hamilton of Epsom, L.
Hamwee, B.
Harris of Richmond, B.
Hayward, L.
Helic, B.
Henley, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Holmes of Richmond, L.
Hooper, B.
Howard of Rising, L.
Howe, E.
Humphreys, B.
Hunt of Wirral, L.
Hussein-Ece, B.
Jackson of Peterborough, L.
Jamieson, L.
Janke, B.
Jenkin of Kennington, B.
Kamall, L.
Keen of Elie, L.
Kempsell, L.
Kramer, B.
Laing of Elderslie, B.
Lancaster of Kimbolton, L.
Lawlor, B.
Lea of Lymm, B.
Leicester, E.
Leigh of Hurley, L.
Lilley, L.
Lindsay, E.
Lucas, L.
Ludford, B.
Maclean of Redditch, B.
Magan of Castletown, L.
Manzoor, B.
Markham, L.
Marks of Henley-on-Thames, L.
Maude of Horsham, L.
McCrea of Magherafelt and Cookstown, L.
McInnes of Kilwinning, L.
Mendoza, L.
Meston, L.

Meyer, B.
Minto, E.
Mobarik, B.
Mohammed of Tinsley, L.
Morris of Bolton, B.
Morrow, L.
Mott, L.
Moylan, L.
Moynihan, L.
Murray of Blidworth, L.
Neville-Jones, B.
Newby, L.
Newlove, B.
Nicholson of Winterbourne, B.
Northbrook, L.
Northover, B.
Norton of Louth, L.
Oates, L.
Offord of Garvel, L.
O'Neill of Bexley, B.
Owen of Alderley Edge, B.
Pack, L.
Paddick, L.
Palmer of Childs Hill, L.
Parkinson of Whitley Bay, L.
Parminter, B.
Penn, B.
Pidding, B.
Pidgeon, B.
Pinnock, B.
Porter of Spalding, L.
Purvis of Tweed, L.
Randall of Uxbridge, L.
Ranger of Northwood, L.
Rawlings, B.
Razzall, L.
Remnant, L.
Robathan, L.
Roborough, L.
Russell, E.
Sanderson of Welton, B.
Sandhurst, L.
Scott of Bybrook, B.
Scriven, L.
Seccombe, B.
Shackleton of Belgravia, B.
Sharkey, L.
Sharma, L.
Sharpe of Epsom, L.
Sheehan, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Smith of Hindhead, L.
Smith of Llanfaes, B.
Smith of Newnham, B.
Stedman-Scott, B.
Stern of Brentford, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Strathcarron, L.
Sugg, B.
Suttie, B.
Swire, L.
Taylor of Holbeach, L.
Taylor of Warwick, L.
Thomas of Winchester, B.
Thornhill, B.
Thurso, V.
Tope, L.
True, L.
Tyler of Enfield, B.
Udny-Lister, L.
Vere of Norbiton, B.
Verma, B.
Walmsley, B.
Watkins of Tavistock, B.
Williams of Trafford, B. [Teller]
Wolfson of Tredegar, L.
Wrottesley, L.
Wyld, B.
Young of Acton, L.
Young of Cookham, L.
Younger of Leckie, V.

NOT CONTENTS

Alexander of Cleveden, B.
Anderson of Stoke-on-Trent, B.
Anderson of Swansea, L.
Armstrong of Hill Top, B.
Austin of Dudley, L.
Bach, L.
Barber of Ainsdale, L.
Bassam of Brighton, L.
Beamish, L.
Beckett, B.
Berger, B.
Berkeley, L.
Blackstone, B.
Blake of Leeds, B.
Blower, B.
Blunkett, L.
Boateng, L.
Bousted, B.
Bradley, L.
Brennan of Canton, L.
Brown of Silvertown, B.
Browne of Ladyton, L.
Caine of Kentish Town, B.
Campbell-Savours, L.
Carberry of Muswell Hill, B.
Carlile of Berriew, L.
Chakrabarti, B.
Chandos, V.
Chapman of Darlington, B.
Coaker, L.
Collins of Highbury, L.
Cryer, L.
Curran, B.
Davies of Brixton, L.
Debbonaire, B.
Donoughue, L.
Drake, B.
Dubs, L.
Eatwell, L.
Elliott of Whitburn Bay, B.
Evans of Sealand, L.
Falconer of Thoroton, L.
Faulkner of Worcester, L.
Golding, B.
Goldsmith, L.
Goudie, B.
Gray of Tottenham, B.
Griffiths of Burry Port, L.
Grocott, L.
Hacking, L.
Hain, L.
Hannett of Everton, L.
Hanson of Flint, L.
Hanworth, V.
Harris of Haringey, L.
Hayman of Ullock, B.
Hayter of Kentish Town, B.
Hazarika, B.
Healy of Primrose Hill, B.
Hendy of Richmond Hill, L.
Hendy, L.
Hermer, L.
Hodge of Barking, B.
Hollick, L.
Howarth of Newport, L.
Hughes of Stretford, B.
Hunt of Kings Heath, L.
Jones of Penybont, L.
Jones of Whitchurch, B.
Jones, L.
Katz, L.
Keeley, B.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kingsmill, B.
Kinnock, L.
Knight of Weymouth, L.
Lawrence of Clarendon, B.
Lemos, L.
Lennie, L.
Leong, L.
Levitt, B.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Livermore, L.
Longfield, B.
Mattinson, B.
Mawson, L.
McCabe, L.
McConnell of Glenscorrodale, L.
McIntosh of Hudnall, B.
McNicol of West Kilbride, L.
Merron, B.
Monks, L.
Moraes, L. [Teller]
Morgan of Drefelin, B.
Morris of Yardley, B.
Murphy of Torfaen, L.
O'Grady of Upper Holloway, B.
Osamor, B.
Pitkeathley of Camden Town, L.
Ponsonby of Shulbrede, L.
Prentis of Leeds, L.
Primarolo, B.
Rafferty, B.
Ramsay of Cartvale, B.
Ramsey of Wall Heath, B.
Raval, L.
Rees of Easton, L.
Reid of Cardowan, L.
Rook, L.
Sahota, L.
Sherlock, B.
Sikka, L.
Smith of Basildon, B.
Smith of Cluny, B.
Snape, L.
Spellar, L.
Stansgate, V.
Taylor of Bolton, B.
Taylor of Stevenage, B.
Timpson, L.
Touhig, L.
Tunnicliffe, L.
Twycross, B.
Uddin, B.
Vallance of Balham, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Watson of Wyre Forest, L.
Watts, L.
Wheeler, B. [Teller]
Whitaker, B.
Whitty, L.
Wilcox of Newport, B.
Wilson of Sedgefield, L.
Winston, L.
Winterton of Doncaster, B.
Young of Norwood Green, L.
Young of Old Scone, B.
Young of Old Windsor, L.

7.47 pm

Consideration on Report adjourned until not before 8.28 pm.

Chancel Repair (Church Commissioners' Liability) Measure

Motion to Direct

7.48 pm

Moved by ***The Lord Bishop of Chichester***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Chancel Repair (Church Commissioners' Liability) Measure be presented to His Majesty for the Royal Assent.

The Lord Bishop of Chichester: My Lords, this Measure rationalises the legal basis on which the Church Commissioners are obliged to provide funds to repair the chancels of certain parish churches. The existing law in this area has its origins in the time before the dissolution of the monasteries in the 16th century. The rule that applied generally in England was that the people of the parish were responsible for

maintaining the nave of the parish church, the main part of the church where the people would generally stand or kneel during services, and the rector of the parish was responsible for the chancel, the eastern-most part of the church that contains the altar and seats the clergy.

Legislation over several centuries, beginning in the 1530s and concluding with the establishment of the Church Commissioners in 1947, has resulted in the commissioners inheriting some of the land that had once formed part of the endowment of a rectory. That ownership carries with it the rector's liability to keep in repair the chancel of the relevant parish church.

The commissioners' land carries liability for around 350 parish churches. In some cases, the commissioners have the whole liability. In other cases, they share it with other landowners. In 2023, they incurred net expenditure of around £354,000 on chancel repairs, which was considerably down on £608,000, which occurred in 2022. They expect expenditure for 2024 and 2025 to be in the region of £1.2 million for each year.

Cathedral chapters also carry liability for the chancels of around 200 parish churches. The Church Commissioners currently have a statutory power to make grants to chapters to cover these liabilities. In 2023, the commissioners made net grants of about £124,000 to chapters for this purpose, meeting the entirety of cathedral chapters' liabilities in this regard.

When land that carries chancel repair liability is sold, the purchaser takes on that liability, provided that it is registered against the title of the land before the sale takes place. That has the potential to reduce the value of the land in question and result in lower sale proceeds than would otherwise be the case. If the liability is not registered against the title of the land, the purchaser takes the land free of the liability, in which case the parish loses out because the liability, in effect, disappears.

This Measure will cut through some of those complex issues. It will detach chancel liability from any land that currently belongs to the Church Commissioners and turn it into a free-standing statutory obligation on the commissioners to make the relevant payments. That will mean that parishes will no longer need to go to the trouble of registering chancel repair liability for which the commissioners are responsible. Those parishes will continue to be entitled to receive payments from the commissioners to maintain the chancels of their churches, and the commissioners will be able to sell land without having to reduce the sale price to take account of a liability having been registered against the title.

The Measure also helps cathedral chapters: instead of having to rely on grants from the commissioners to offset their liability to repair the chancels of various parish churches, chapters will no longer carry the liability at all. It will be transferred to the commissioners, who will become subject to a direct statutory obligation to meet the liabilities that, until now, have fallen on cathedrals. As noble Lords will be aware from its report, the Ecclesiastical Committee has considered the Measure and found it to be expedient. I beg to move.

The Deputy Speaker (Baroness Morris of Bolton) (Con): My Lords, the noble Baroness, Lady Harris of Richmond, is taking part remotely, and I invite her to speak.

Baroness Harris of Richmond (LD) [V]: My Lords, I will be brief. The Ecclesiastical Committee, under our excellent chair, the noble and learned Baroness, Lady Butler-Sloss, considered these Measures on 3 February this year, as we have heard, after they had gone through all the synod's scrutiny. Before I begin, I must declare my interests: I am high steward of Ripon Cathedral in North Yorkshire—as we have heard, cathedrals are also mentioned in the Measure—and I have a nephew who is a parish priest on the Isle of Man, although that is exempt from these Measures at the moment.

The first Measure, on chancel repair et cetera, is about an enforceable liability to repair or contribute to the repair of the chancel of a parish church. In essence, it would detach the Church Commissioners' liability from the affected land and convert it into a free-standing statutory duty, as the right reverend Prelate the Bishop of Chichester told us clearly. This would enable the Church Commissioners to sell any land they own, free of responsibility for the repair of any chancel liabilities. The commissioners would continue to be liable to repair the chancel as a continuing statutory duty, even after they sell any land for which there is a chancel repair liability.

The Measure also makes provision for the conversion of the current statutory chancel repair duty of the chapter of each cathedral into a statutory duty of the commissioners. It does not abolish chancel repair liability or change the liability of third parties to pay contributions to any chancel repair that is needed. As the right reverend Prelate has already told us, we were happy to accept this Measure, as proposed by the synod.

Baroness Butler-Sloss (CB): My Lords, as your Lordships' House has heard, I am chair of the Ecclesiastical Committee. The committee heard a considerable amount of evidence from the Church, and a number of MPs who are part of the Ecclesiastical Committee asked some very relevant questions, as did the noble Baroness, Lady Harris, who has just spoken. We were satisfied, according to the 1919 statute that sets up the Ecclesiastical Committee, that it was "expedient"—that is the phrase used in the statute—to pass this Measure to this House.

Lord Griffiths of Burry Port (Lab): My Lords, I do not know whether it is appropriate for me to contribute, but I feel I must. I was also part of the committee coming to the conclusion that the noble and learned Baroness has just mentioned. My degree in theology at Cambridge clearly did not fit me for understanding the complexities of land tenure in parish churches, but I just wished—I know that this is a silly thing to say—that all the chancels in Methodist churches that I know about could have been included in the Measure being put forward.

Lord Scriven (LD): My Lords, I wish to follow on the noble Lord's last comment: of course they would not, because the Methodist Church is not the established

[Lord Scriven]
Church. That is why we are discussing this issue: because it is the established Church. I think that most people watching this—I declare my interest as a member of the National Secular Society—will be surprised that, in 2025, we have to debate this based on the established Church and the archaic nature of one Church in this land.

I appreciate that the right reverend Prelate has to come and speak to this Measure because of the position that the established Church is in and the privilege that the Bishops sometimes get to be able to plead to Parliament about some special interest for the established Church, but I wish to place on record not just my voice but that of many people. The very fact that we have an established Church and these archaic rules means that this Parliament has to take this up. It would be better, eventually, for the Church to be disestablished and to be in control of its own rules and laws and not subject to the need for Parliament and parliamentary time.

The Lord Bishop of Chichester: My Lords, I thank noble Lords for the comments that have been made, and I am especially grateful for the interest and support of Methodists, who view the matter from a different perspective. Perhaps I may comment on the place of the Church of England in the history of the land. We are very aware of being the stewards of a large part of this nation's history. Much of it is invested in the physicality of our church buildings, and I regard this process as one in which we are transparent and accountable for how we discharge that responsibility, so I hope that this will not be regarded as time that is wasted.

Lord in Waiting/Government Whip (Lord Moraes) (Lab): My Lords, I understand that, under this procedure, there is no reply from the Government.

Motion agreed.

Church Funds Investment Measure

Motion to Direct

7.59 pm

Moved by ***The Lord Bishop of Chichester***

That this House do direct that, in accordance with the Church of England Assembly (Powers) Act 1919, the Church Funds Investment Measure be presented to His Majesty for the Royal Assent.

The Lord Bishop of Chichester: My Lords, this is another piece of reforming legislation; it updates legislation dating from 1958, which enables various Church of England bodies to invest in pooled funds. These are known collectively as the CBF Church of England funds. Approximately 11,500 Church bodies invest in these funds; they include diocesan boards of finance, parochial church councils and cathedral chapters. The current assets of the funds are in the region of £3 billion.

The legislation authorising these pooled investment funds—the Church Funds Investment Measure 1958—is out of date and prevents those funds being regulated funds. To address this, the measure provides for the transfer of the CBF Church of England funds to what is known as a charity-authorised investment fund. The structure for this type of fund was created in 2016 by the Financial Conduct Authority working with the Charity Commission. It has significant advantages for investors. First, charity-authorised investment funds are jointly regulated by the Charity Commission and the Financial Conduct Authority. This offers investors greater protection and reassurance that the funds are regulated and overseen in accordance with industry best practice while maintaining their charitable status. Secondly, no VAT is payable on the fees of the managers of these funds, resulting in a modest saving for charities that invest in them.

The Measure permits the trustee of the CBF Church of England funds to transfer the assets of those funds to a charity-authorised investment fund. The result will be the CBF Church of England funds, instead of being unregulated as is currently the case, will become authorised and regulated jointly by the Financial Conduct Authority and the Charity Commission. Value added tax will also cease to be payable on investment managers' fees, resulting in a cost saving to church investors. Again, the Ecclesiastical Committee has found the Measure to be expedient. I beg to move.

Baroness Butler-Sloss (CB): My Lords, as the House knows, I am chairman of the Ecclesiastical Committee. We considered this Measure, we heard evidence from the Church and we deemed it expedient.

Perhaps I could just add that, since the Church of England is the established Church, it is entirely appropriate that suitable Measures from synod should become Acts of Parliament, which is what is happening at the moment—and these two Measures are appropriately being brought to this House.

Lord Scriven (LD): My Lords, no one disputes that the present system creates this for Parliament. My argument is not that it is happening; my argument is that it should not happen because we should not have an established Church. It is quite incredible—and I hope that the outside world listens to this debate—that the Church of England suddenly has a £3 billion fund that it now wishes to be regulated, which is good, but also that it can save money by not paying VAT. Again I point out that, by having the Bishops in this House, the Church has a special and privileged position to be able to argue for that. So while the system of the established church remains, Parliament's time is going to be wasted with this kind of discussion about the governance of the Church of England, when with any other church it would be for the equivalent of the synod to make that decision without having to come to this Parliament to make the decision of synod. That is all my argument is—that, regardless of whether this is a good or a bad Measure, it should not be coming to Parliament because we should not have an established Church; it should be an equal church among many religions and faiths across the country, and Parliament should be debating other things rather than the internal governance and how to use £3 billion of the Church of England's funds.

The Lord Bishop of Chichester: I am grateful for the comments that have been made. I leave the matter at that. We greatly value the leadership of the noble and learned Baroness, Lady Butler-Sloss. I would like to record, if I may, our thanks to her for her diligent chairing of the Ecclesiastical Committee.

Motion agreed.

8.04 pm

Sitting suspended.

Mental Health Bill [HL]

Report (1st Day) (Continued)

8.28 pm

Clause 36: Transfers of prisoners and others to hospital: time limits

Amendment 38

Moved by ***Lord Bradley***

38: Clause 36, page 49, line 25, at end insert—

"(d) a specified accountable person or body is appointed, who will be responsible for ensuring that the provisions within this subsection are completed within the specified time limit."

Member's explanatory statement

This amendment seeks to ensure that there is an accountable person, who will ensure that transfer to hospital takes place within 28 days.

Lord Bradley (Lab): My Lords, I declare my interests as listed in the register.

In Committee, I moved an amendment that would require a specified accountable person to be appointed by the relevant referring body to ensure that the specified 28-day transfer period is met. This proposal was based on the fact that many agencies are involved in arranging prison transfers. From my experiences in helping to develop services across health and justice, I believe there could be significant merit in creating a single role: a dedicated official whose primary function would be to ensure efficient transfers, with the ability and power to liaise and intervene with the various agencies at the most senior level where necessary.

As I said in that debate, the amendment would clarify and enhance accountability and transparency, and

"support the desire expressed in the impact assessment"

of the Bill to increase

"'accountability for all agencies involved in the transfer process to meet' … the deadline".

It is important to note again that this is supported by

"Sir Simon Wessely's independent review, which stated that it would help … 'unblock the institutional barriers and … give … the teeth it needs to push the transfer through'".—[*Official Report*, 27/1/25; col. 61.]

At the conclusion to that debate, first, the noble Lord, Lord Kamall, from the Opposition Front Bench, commented that my amendment

"again, speaks to the point of implementation"

of provisions in the Bill, and said that this

"could be a sensible way of holding providers to account and working with them to address the shortcomings in patient transfers".—[*Official Report*, 27/1/25; col. 66.]

Secondly, and most importantly, the Minister, my noble friend Lord Timpson, helpfully reminded the House that the previous Government had run a public consultation seeking views on the effective way to establish this role, but no consensus was reached. Further, a cross-agency working group was established to scope out the role, and that work

"continues between health and justice partners"

on this issue. He suggested that a non-statutory approach

"will ensure that the interests of patients are considered while providing the flexibility required, given the complexity of the process".—[*Official Report*, 27/1/25; cols. 67-68.]

Very helpfully again, the Minister offered to meet to discuss this further and for that to be undertaken before Report. I am very pleased that such discussions have taken place, and thank not only the Minister but the excellent officials in both the Ministry of Justice and NHS England for their very constructive engagement with me.

I still strongly believe that we need effective oversight of the transfer process, hence I tabled Amendment 38, which proposes that either an accountable person "or body"—a slight extension to my original amendment—is established for the purpose and, of course, to ensure accountability and transparency to Parliament on this matter. I hope the Minister will now support this proposition. I look forward to his response at the end of this short debate and will listen carefully to it. I beg to move.

Baroness Fox of Buckley (Non-Afl): My Lords, in Committee, a number of us stressed the importance of those sections of the Bill relating to its application for prisoners suffering mental disorder. I continue to push to ensure that the parts of the Bill that relate to the responsibilities of the MoJ in relation to the Department of Health and Social Care are not neglected once the Act becomes law.

In Committee, I focused on calling for a government review of the impact of the Bill on prisoners, but, from listening to the thoughtful response from the noble Lord, Lord Timpson, I saw that this could become yet another bureaucratic report. I therefore commend Amendment 38 from the noble Lord, Lord Bradley, as an elegant way of ensuring that the crucial provision of a transfer to hospital within 28 days is more than an "if only" paper aspiration.

My Amendment 40, which I am delighted is supported by the noble Baroness, Lady Bennett of Manor Castle, is also a practical proposal. It is designed to tackle problems that directly pertain to the Bill, broadly because, regardless of this legislation, the reality is that there will continue to be large numbers of prisoners suffering mental disorders who are incarcerated within the prison estate rather than in secure hospitals. The question then is what happens to their mental health care when they are released. If this aspect is neglected, these ex-prisoners could well become increasingly unwell and deteriorate, and therefore be in need of future detention.

[Baroness Fox of Buckley]

It would be a real mistake to neglect any policy or practice associated with this Bill that fails to address the need for bespoke, ongoing support in the community, in which ex-prisoners' mental health is not allowed to fall further, creating new risks to both them and the public. This is a real risk. Estimates from a 2023 report from the Centre for Mental Health, based on a survey of 75% of prisons and young offenders' institutions in England, found that one in seven prisoners receive mental health support while in custody—the figure is one in four among women. However, continuity of that care collapses after release. Research led by the University of Manchester recently found that, of 53 prisoners who had been in touch with in-house services due to severe and enduring mental health conditions, only four were in touch with community health services six months after release.

It is perhaps understandable why this happens. When leaving prison, both the authorities and prisoners may focus on practical challenges, such as lack of housing and how to earn money and a living, and therefore mental health support can and does slip down the priority list. It is also the case that leaving prison can present a shock to the system, and that affects this. Prisoners will be leaving a structured environment, focused on routine, and, in many instances, returning to more disorganised and chaotic conditions. Freedom may mean an arbitrary end to an effective course of treatment, someone having waited perhaps months or even years to access services, such as therapy or specialised groups, in which they have started to open up about traumatic experiences—all in-prison services. Suddenly, on release, there is an abrupt end to such support. Targeted interventions, prescribing regimes and the access to medication inside are no longer guaranteed on the outside.

I understand that ensuring continuity of care can be incredibly difficult. People leaving prison often have multiple and complex needs, and can be wary of accessing care in the community because of a lack of trust in state institutions that means that they are less likely to proactively seek out help. Ex-prisoners report that they fear that disclosing mental health challenges to, for example, probation staff will draw attention to their vulnerabilities. Then there is the dread of recall—an especially acute fear for IPP prisoners: a fear of being sent back to prison if they appear too ill to cope, or a dread of that other detention mechanism, sectioning.

All that this amendment seeks is to ensure a smooth handover between prisoners and community services. Without such ministerial reassurance, I fear that this will undermine core parts of the Bill unless it is taken into account. The stock reply to such concerns is that prison mental health services send on information to prisoners' GPs, but in the real world this is often nonsense. Prisoners often do not have a fixed address on release, so they are discharged with just a medical letter. Prison nurses explain that they do not know where their patient will be released to, beyond a hostel somewhere, making it impossible to connect that person to even primary care. Prison-led medical staff complain that often they are not informed of the impending release until very shortly beforehand—sometimes a week or days—and this is especially acute in relation to the present early release scheme. There is not enough time to set up appropriate community provision, to communicate with services or even to conduct proper assessments of individual patients before their release. Clinical needs are therefore deprioritised, and prisoners fall through the net of statutory services.

What is needed, and what this amendment envisages, is that a relevant detention authority is responsible for discharge packages which will, for example, register prisoners with GP services in the precise area a person is discharged to, and liaise with relevant third-party organisations and community provision to make arrangements. Prisons and health authorities would work together to prevent deteriorating mental health and the potential for behaviour on the outside that would mean yet more contact with the criminal justice system for the ex-prisoner and, possibly, emergency intervention and detention.

Baroness Bennett of Manor Castle (GP): My Lords, I support Amendment 40, tabled by the noble Baroness, Lady Fox, and have added my name to it—probably not a combination that you will see very often. This amendment, as the noble Baroness set out with practical, clear evidence, makes such a lot of sense that I had to back it.

My particular interest when it comes to prison policy is women in prison. More and more shocking figures are emerging all the time about what is happening in our women's prisons. A third of women in prison are now self-harming, which is a 29% increase in the last quarter, and 82% of women in prison report mental health problems. As the noble Baroness said, one in four women in prison are receiving help from mental health services. That is not to say that there are not enormous issues around male jails as well—the figure for male jails is one in seven—but I want to take a moment to paint a picture.

Six in 10 female prisoners are serving sentences of less than six months. Their life is torn apart and they are put into prison, where maybe they start to get help from the mental health services. Here are some other figures: seven in 10 women in prison report being victims of domestic violence; 53% report that they were victims of child abuse. We have a huge and often acute need for mental health services here, yet, as the noble Baroness set out, these women are thrown out, virtually on to the street, and the chances of continuing care and support being there are utterly unrealistic.

I suspect the Minister will say that the Government are trying to improve the situation. I respect and understand that. None the less, this is a practical, sensible measure that it would be common sense for the Government to take on board.

Baroness Tyler of Enfield (LD): My Lords, briefly, I want to make a couple of contributions to the debate. In so doing, I reflect on that fact that we have not spent much time talking about the criminal justice side of this Bill. I wonder why that is.

On the amendment tabled by the noble Lord, Lord Bradley, it makes eminent sense to ensure that there is an accountable person or body responsible for ensuring that transfers to hospital occur within 28 days. I have a simple view of the world: if you want to make

sure that some things get done, you need to ensure that someone is in charge and that that person is held to account. As the Minister knows, I am quite keen on responsible people, particularly in relation to this Bill, to ensure that things get done—hence, I support the amendment.

I was very interested in the arguments put forward by the noble Baroness, Lady Fox, for her amendment, focusing on ensuring that prisoners treated for a mental disorder have access to continued mental health treatment once they are back in the community. That is such common sense and such an obvious thing to do, if we are to stop repeat admissions and detentions and the whole thing becoming a revolving door. We all know that it is not easy in the community at the best of times to get access to the treatment that you need, particularly mental health treatment. It is particularly difficult for people who have recently been released from detention. Further, we all know the episodic nature of many mental health conditions, so this amendment is just good common sense.

Lord Davies of Brixton (Lab): I want to express my support for the amendment from my noble friend Lord Bradley, because in Committee I had a parallel amendment that dealt with a similar issue. I very much agree with what the noble Baroness, Lady Tyler of Enfield, said about locating specific responsibility for getting people through the system. In this area, time is absolutely of the essence to avoid crises and worsening mental health states. So I strongly support the thought behind my noble friend's amendment, and I hope the Minister can help us by showing that the problem is understood and that the Government see it as a priority to resolve the problems that undoubtedly occur at present.

Lord Kamall (Con): My Lords, I will speak briefly to Amendments 38 and 40. One of the things about being a politician is that when you say things, you cannot hide. When the noble Lord, Lord Bradley, told me he was about to quote me in his contribution, I thought, "Oh no, what have I said now?", so I am grateful to him for warning me and not being too harsh on me. As other noble Lords have said, this is an eminently sensible amendment, and I hope we will get a positive response from the Minister.

8.45 pm

I turn to the amendment in the names of that dynamic duo, the noble Baronesses, Lady Fox and Lady Bennett of Manor Castle. It is an important issue. We know that when you speak to charities that help current offenders and ex-offenders, they say that one of the issues behind reoffending is the support you get when you leave prison, not just for mental health issues but generally. You are left with not very much money. Where do you find housing? How do you reintegrate back into the community? Other noble Lords have talked about that shock already.

This amendment is sensible. It seems to me that we cannot have a scenario where a person is treated for mental health conditions while they are serving a custodial sentence, but once released they are simply left without any help. Given the variety of conditions that those in prison may have, we cannot have a cliff edge of support that could cause harm to that individual and perhaps lead to them causing harm to others in the community.

There is something of a parallel here with Amendment 37 tabled by my noble friend Lord Howe and, indeed, the amendments we tabled towards the end in Committee. These amendments are all about ensuring proper continuity of care, and that is the important thing. It is not just a bit of care here and a bit of care there; we have to make sure we have a proper continuity of care. I think the Minister used the word "pathway" previously, if I have been doing my homework and remembering what she said.

It is really important that we have this pathway between being detained and treated under the Mental Health Act and then moving into community services, to ensure that treatment for that individual is effectively continued for as long as they need it. As all speakers have said, we cannot ignore the experience and treatment of prisoners in this process. I look forward to the comments from the Minister.

The Minister of State, Ministry of Justice (Lord Timpson) (Lab): I am grateful to my noble friend Lord Bradley for bringing this discussion before the House today and his commitment to improving outcomes for patients since the publication in 2009 of the *Bradley Report*, which highlighted the need to ensure that transfers between prison and secure hospital take place in a timely manner. I also thank him for his kind words about my superb team in the Ministry of Justice.

The Government are committed to addressing the unnecessary delays that some patients experience, which can cause significant distress to these individuals, their families and those charged with their care. Transparency and accountability, as the noble Lord, Lord Davies of Brixton, and the noble Baroness, Lady Tyler, expressed clearly, are essential to the successful implementation of this reform and to reducing delays more broadly. I thank my noble friend Lord Bradley for the constructive conversations with my officials since Committee to ensure we get this oversight mechanism right.

I am pleased to share that this Government have recently established a health and justice strategic advisory group, which will bring together key partners with responsibility for the various parts of the transfer process. This group will be chaired by a national clinical director, who will report regularly to Ministers and be responsible for agreeing a joint work plan to support implementation of the statutory time limit, identifying solutions to common barriers to timely transfers and holding partners to account. I am confident that this group will provide effective oversight by bringing together operational leaders across health and justice with the levers necessary to effect change, while inviting challenge from critical friends such as the Care Quality Commission and His Majesty's Inspectorate of Prisons to ensure external scrutiny. I will continue to work closely with my noble friend Lady Merron to ensure that the long-term future of the strategic advisory group remains a priority.

As my noble friend announced earlier, the Government have committed to providing an annual report to Parliament on the implementation of the Mental Health Act reforms.

[Lord Timpson]
Through this reporting mechanism, I will update Parliament on the implementation of the statutory time limit and on the strategic advisory group, and provide data on transfer timelines when available for publication. I hope this reassures my noble friend of this Government's commitment to improving timely access to treatment. I urge him to withdraw his amendment.

Amendment 40 tabled by the noble Baroness, Lady Fox, and supported by the noble Baroness, Lady Bennett of Manor Castle, would ensure that prisoners released into the community who have previously been treated for a mental disorder can continue to receive access to treatment in the community. Section 117 of the Mental Health Act already places a duty on health and social care services to provide aftercare to patients under specific criminal justice sections of the Act who are released from hospital into prison or into the community. These services aim to reduce the risk of a deterioration of the patient's mental condition and, accordingly, the risk of them requiring admission to hospital again for treatment.

The noble Baroness, Lady Bennett, is right that our women's prisons have many women who are mentally unwell. That is why we have set up the Women's Justice Board—to reduce the number of women in prison and to help divert many women away from custody in the first place.

The noble Baroness, Lady Fox, will be pleased to know that, in addition to the Section 117 aftercare that is available to those detained under the Mental Health Act, all prisoners who have engaged in any form of treatment while in prison—regardless of whether they have been detained under the Mental Health Act —have access to services in the community when they are released.

To strengthen the links between substance misuse and health services in prisons and in the community, and to support access to treatment, we have recruited 57 health and justice partnership co-ordinators and managers across all probation regions in England and Wales. NHS England's RECONNECT, a care after custody service, supports prison leavers with vulnerabilities including mental health needs to engage with the right health services in the community through referrals and peer support. The noble Lord, Lord Kamall, is right: through-the-gate continuity is crucial. The successful pathway is how we reduce reoffending and help people who are unwell.

I hope this reassures the noble Baroness that there is already sufficient provision in the Act to ensure that prisoners who have previously been treated for a mental disorder can continue to receive access to treatment in the community. I urge her not to move the amendment.

Baroness Fox of Buckley (Non-Afl): My Lords, I do not doubt in any way that prisoners can access that community care; the problem is that they are not accessing it. The assurances about new schemes are positive, but the idea was to make this more than just an abstract wish list and make sure that something practical happens. If that is what the new scheme—although it does not exist yet—will do, that is reassuring, but it is certainly not what is happening now.

Lord Timpson (Lab): The noble Baroness has visited many prisons, as I have, and knows how complex they can often be. One of the main points of the Bill is to make sure that our partners—because we often work with third sector organisations—make sure that it is a priority that people who are leaving prison and are unwell get the continuing care that they need.

Lord Bradley (Lab): My Lords, I am very grateful to the Minister for that positive response. I believe it is a major step forward in ensuring that the time limit of 28 days for the transfer of prisoners to an appropriate health setting is adhered to. I believe that the new strategic body that the Minister recommended will also have a significant part to play in increasing transparency and accountability as we go forward.

I am pleased that, in the general debate, the Minister mentioned the RECONNECT service, which is being rolled out across the country as we speak. It will have a significant impact on the continuity of care that has so rightly been identified tonight. With the assurance the Minister has given to the House, I beg leave to withdraw my amendment.

Amendment 38 withdrawn.

Amendment 39

Moved by ***Baroness Merron***

39: Clause 36, page 52, line 4, leave out subsection (5) and insert—

"(5) In section 143 (general provisions as to regulations, orders and rules)—

(a) for subsection (2) substitute—

"(2) The following are subject to annulment in pursuance of a resolution of either House of Parliament—

(a) any Order in Council under this Act;

(b) any order made by the Secretary of State under section 54A or 68A(7);

(c) any statutory instrument containing regulations made by the Secretary of State under this Act, other than regulations made under section 48B(3);

(d) any statutory instrument containing rules made under this Act.";

(b) after subsection (3) insert—

"(3ZA) A statutory instrument containing regulations under section 48B(3) (whether alone or with other provision) 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 is consequential on my amendment to clause 18, page 26, line 6.

Amendment 39 agreed.

Amendment 40 not moved.

Clause 43: Advance choice documents

Amendments 41 to 43 not moved.

Amendment 44

Moved by ***Lord Kamall***

44: After Clause 47, insert the following new Clause—

"Removal of patients by authorised persons

(1) The Mental Health Act 1983 is amended as follows.

(2) In section 135 (warrant to search for and remove patients)—

(a) in subsection (1), after "constable", insert "or authorised person";

(b) in subsection (1A), after "constable", insert "or authorised person";

(c) in closing words of subsection (2), after "constable", insert "or authorised person";

(d) in subsection (3ZA)(a)(ii), after "constable", insert "or authorised person";

(e) in subsection (7)(b), after "constable", insert "or authorised person".

(3) In section 136 (removal etc of mentally disordered persons without a warrant)—

(a) in subsection (1), after each instance of "constable", insert "or authorised person";

(b) in subsection (1A), after "constable", insert "or authorised person";

(c) in subsection (1B), after "constable", insert "or authorised person";

(d) in subsection (2A)(a)(ii), after "constable", insert "or authorised person"."

Member's explanatory statement

This amendment and others in the name of Lord Kamall seek to introduce a new category of "authorised person" who can carry out detentions under the 1983 Act to offer better inter-agency response. The proposed amendments would remove the need for the presence of police at mental health incidents in the absence of any risk.

Amendment 44 agreed.

Clause 50: Procedure for certain regulations made by virtue of sections 18 and 36

Amendment 45

Moved by ***Baroness Merron***

45: Leave out Clause 50

Member's explanatory statement

The material in this clause is, so far as it needs to be retained, inserted into clause 36 (see my amendment to that clause).

Amendment 45 agreed.

Amendment 46

Moved by ***Baroness Merron***

46: After Clause 51, insert the following new Clause—

"Review of duty to notify incidents

(1) The Secretary of State must carry out a review into—

(a) whether regulation 18 of the Care Quality Commission (Registration) Regulations 2009 (S.I.2009/3112) (duty to notify incidents) ought to be extended to require a notification to be given in any other cases in which a person under the age of 18 is admitted to a hospital or registered establishment for medical treatment for, or assessment in relation to, mental disorder, and

(b) whether the time period mentioned in regulation 18(2)(h) of those Regulations remains appropriate.

(2) The Secretary of State must prepare and publish a report setting out the conclusions of the review.

(3) The Secretary of State must lay a copy of the report before Parliament.

(4) The report must be laid and published before the end of the period of 2 years beginning with the day on which this Act is passed.

(5) In this section the following expressions have the meaning given by section 145 of the Mental Health Act 1983—

"hospital" ;

"medical treatment" ;

"mental disorder" ;

"registered establishment" ."

Member's explanatory statement

This requires the Secretary of State to carry out a review into the circumstances in which incidents involving mental health patients under the age of 18 ought to be notified to the Care Quality Commission.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron) (Lab): My Lords, having heard the concerns of noble Lords in Committee around the placement of children and young people, we want to go further than when we started. It is a statutory requirement for CQC to be notified when a person under 18 is placed in an adult psychiatric unit for longer than 48 hours. CQC takes action to assess risk and ensure the child is being safeguarded. Government Amendment 46 will now require the Secretary of State to review whether current notification requirements should be extended to other incidents and whether the 48-hour time period remains appropriate. A report on the findings of this review must be laid before Parliament within two years.

I am also pleased to announce today that NHS England will use existing powers under the NHS Act 2006 to require ICBs to provide information, first, on accommodation or facilities for patients under the age of 18 and, secondly, on any incidents where a person under the age of 18 is placed in a setting that is clinically appropriate but is outside of the natural clinical flow or not in a specialised children and young people's mental health ward. Those requirements will be set out in the new service specification and made clear in the revised code of practice. Collecting this information is crucial to enable NHS England to monitor and minimise risk and make the case for changes in local capacity to meet population needs.

Finally, I am pleased to announce that we will lay regulations under existing powers to require ICBs to provide information that CQC reasonably requests and to publish an action statement where directed to do so by CQC. This will strengthen CQC oversight of how it monitors the application of the Act in local areas, such as the duty on ICBs under Section 140 to notify local authorities specifying hospitals where arrangements are in place for the provision of accommodation and facilities for children and young people. I hope that noble Lords will feel able to support this amendment. I beg to move.

Baroness Browning (Con): My Lords, I just want to clarify something, as the Minister has referred quite a lot to NHS England and its role going into the future. My understanding is that there is a sea change due at NHS England. How can we be sure that some of these roles, which are very important to this Act, will still be there and that they will be the people who will be responsible?

Baroness Merron (Lab): I will answer the question at the end for simplicity; I do have an answer for the noble Baroness.

9 pm

Lord Meston (CB): My Lords, in those circumstances, if I may, I shall now speak to Amendment 51, which is also in this group. This is the same amendment that I put forward in Committee to provide a statutory basis for determining the competence of a child under 16 to make decisions for the purposes of this Bill and the Mental Health Act 1983. I should emphasise that it is concerned not with the consequences of such decisions but with the determination of competence for the purposes of those decisions.

I will not repeat at any length the arguments from Committee but remind the House that this amendment was prompted by the report of the Joint Committee on the draft Bill, which referred to the complexity of the law in this area concerning those under 18 years of age and referred to the absence of consistent criteria to establish capacity or competence. Sixteen and17 year-olds are subject to the Mental Capacity Act and have the benefit of a statutory presumption of capacity applicable to adults. Children under 16 covered by this Bill do not have the benefit of that presumption and the existing Mental Capacity Act does not apply to them.

The competence or otherwise of those under 16 to make decisions is considered by reference to the principles decided judicially by the House of Lords in the case of Gillick, to which the Minister referred when rejecting my amendment. However, Gillick did not actually set out any test for assessment of competence or any method for such assessment. It simply provided that a child under 16 could consent to medical treatment if considered by professionals to have the maturity and intelligence to understand what is involved. There was no indication of how the broad notions of maturity and intelligence were to be assessed.

This has left professionals, legal and medical, with what has been called inherent uncertainty. The Bill will create a range of situations in which professionals will have to assess a child's competence, but it is silent as to how that is to be done. In rejecting this amendment, the Minister suggested that it could cause confusion if it was seen to be a different test to that established by Gillick.

The more that I and others have thought about that and analysed the argument, the harder it has been to accept it. First, as I have said, Gillick does not establish any methodical test. The House of Lords in that case did not have to set out how competence was to be assessed. Secondly, this amendment does not conflict with or undermine Gillick. On the contrary, it is intended to build upon it and to provide a workable approach to problematic assessments which professionals sometimes have to undertake.

The amendment provides a clear, structured test for determination of a child's competence to fill the gap in the Bill and to address the uncertainty to which the Joint Committee referred. I therefore suggest that, rather than create uncertainty or confusion, as was suggested by the Government, it will actually reduce or remove it, and it will provide a clear statement of parliamentary intention as to relevant considerations to be brought to bear.

The Minister has been kind enough to write to me recently, explaining further the Government's reasons for not supporting my amendment. She stated concern that it could have unintended consequences. However, unintended consequences are by their nature unknown, unforeseeable and may never happen. I have therefore found it difficult to understand the Government's concerns, particularly as my amendment is expressly limited, referring only to decisions under this Bill and under the existing statute.

The Government also suggested that it might have the effect of restricting the ability of children to exercise choice and autonomy. I have to say I do not understand how that could be suggested. On the contrary, I think it would facilitate the exercise of choice and ensure respect for Article 12 rights, which are expressly referred to in the amendment. The exact terms of Article 12 of the UN convention require that a child who is capable of forming his or her own views is assured of the right to express those views freely, and that those views are given due weight according to age and maturity. In short, I do not see the problems suggested by the Government, and accordingly I commend this amendment.

Baroness Butler-Sloss (CB): My Lords, I agree with all three amendments that we are considering at this moment, but in particular I support Amendment 51 and agree respectfully with every word that the noble Lord, Lord Meston, said. He has set it out extremely carefully and clearly.

Despite meeting the most helpful Minister to discuss this and other matters in the Bill, I absolutely cannot understand why the Government do not realise that the absence of any information to help medical professionals looking at a 14 or 15 year-old who has mental health issues, which are why they are in hospital, but who appears otherwise to be very bright, is an issue. How on earth are they to judge whether that child has the degree of competence necessary for the professionals to listen carefully to what the child has to say? If you are over 16, you are included in the Mental Capacity Act 2005, but under-16s have not been included.

I emphasise the point made by the noble Lord, Lord Meston, that Gillick is very long-winded. It would be unreasonable for any medical professional looking at a child of 13, 14 or 15 to settle down and read the judgments of the then House of Lords to find out that they say that Gillick should be applied but absolutely do not say how.

This is why we have this amendment. The Government might decide that they are not prepared to accept it. I did not see the letter that the Minister sent to the noble Lord, Lord Meston, but I cannot understand why there is any confusion. I cannot understand why a form of advice to mental health professionals on dealing with under-16 year-olds in mental health conditions might be applied in any other circumstance in any other litigation. It does not apply.

I have spoken not only to the Minister but to the very helpful team who surround her, and I have been completely unable to understand what on earth they

are really worried about. I would be—and I would like the Government to be—much more worried about anyone over 16. There is primary legislation telling anyone how to judge that someone over 16 has the ability to make decisions, but there is nothing to tell anybody about someone under 16.

In my view, there will be a serious lacuna in the law that is very unhelpful, particularly to mental health professionals. What on earth are they going to do with a child who, as I say, is bright and cheerful despite what his or her mental health problems are? How on earth are they going to approach judging whether that child has the sort of competence that over-16s have?

I find it difficult that what is contained in this excellent proposed new clause by the noble Lord, Lord Meston, is seen as somehow confusing or that it will be used in the wrong circumstances, or anything like that. If Amendment 51 is not going to be accepted, what on earth is the help that the Minister expects to give to mental health professionals dealing with under-16s?

Baroness Bennett of Manor Castle (GP): My Lords, I say humbly and briefly, following that expert explanation of Amendment 51 from the noble Lord, Lord Meston, and its powerful reinforcement by the noble and learned Baroness, Lady Butler-Sloss, that I attached my name to this amendment simply because I thought it was such an important one, following our debate in Committee. I felt that it should have a full slate of signatures from as broadly around the House as possible. I do not claim any particular expertise here, but my intention to do this was strengthened by the joint briefing from the Law Society, Mind and the Children and Young People's Mental Health Coalition. It is quite notable and I am sure many noble Lords will have received it. That briefing is explicitly on Amendment 51, which just shows the level of concern on this issue among NGOs.

It is worth saying—it is kind of stating the obvious—that, as the briefing notes:

"We consider that the test should be on the face of the Bill, not in a Code of Practice as the Government suggests. This is because the courts have made clear that codes of practice should reflect the law and cannot create law".

That sets out clearly to me, as a legal lay person, where we are. As the joint briefing then says,

"a clear and consistent approach to assessing a child's competence can only be achieved by including a test in the Bill. The Code is not the right place".

Baroness Tyler of Enfield (LD): My Lords, I will also say briefly that I too added my name to Amendment 51 in the name of the noble Lord, Lord Meston. In Committee, I pondered this issue long and hard. At one stage, I thought that perhaps more consultation was required, but having listened to the arguments and heard from people in the sector, which was very helpful, along with the briefings we have received, I am now firmly of the view that this is a real gap in the current Bill.

We have this opportunity and, as has been said two or three times so far today, we do not get such an opportunity very often. It might be once every 10 or 15 years that we get the opportunity to look at mental health legislation such as this. I have therefore come strongly to the view that we need to make the most of this opportunity so that there is a proper test for decision-making for under-16s—a sort of competence test—within the Bill.

In coming to that view, I have taken two or three things into consideration. One is that it would apply only when the Bill requires that a child's competence is to be considered. Then, very importantly I thought, the amendment is concerned only with the question of a child's ability to decide, not what happens once that has been determined. Finally, this excellent amendment explicitly limits this test to decision-making under the Bill and the previous Mental Health Act 1983. In short, it applies only to children who fall within the scope of this legislation, so it is tightly drawn. The noble and learned Baroness, Lady Butler-Sloss, set out so powerfully the need for this and the case for it, in a way that I could not possibly do. I just wanted to explain how my thinking had evolved since our discussions in Committee.

Briefly, while I am on my feet, I was always very supportive of the amendment put forward by the noble Earl, Lord Howe, for strengthening safeguards for children admitted to adult wards and out-of-area placements. This is a really important issue and I shall be interested to hear what he has to say on the subject. I was also interested to hear the Minister talk about the amendment that she has put forward in relation to this, so I hope that progress is being made in this important area. I will be interested to hear what the noble Earl's reaction is to that.

Earl Howe (Con): My Lords, I join other noble Lords in expressing my full support for Amendment 51 in the name of the noble Lord, Lord Meston. A very compelling case was put by forward by him and the noble and learned Baroness, Lady Butler-Sloss.

I also thank the Minister very warmly for her Amendment 46 and her helpful explanation of what it is likely to entail regarding the process that will flow from it. It is reassuring to know that our Committee debates on age-appropriate treatment for children and young people have been seriously considered by the Minister. I put on record my appreciation of the advanced notice she gave me of her intention to meet noble Lords' concerns in this constructive way. I hope, nevertheless, that she will not mind me posing a number of questions prompted by the government amendment and my Amendment 58, which has been grouped with it.

9.15 pm

The Mental Health Act states that hospital environments should be suitable to the age of the patient. The mental health code of practice states clearly that admissions of children to adult wards are permitted only under exceptional circumstances. Yet, as I indicated in Committee with the aid of some stark and very troubling examples, we still have a very considerable problem in this whole area of mental health practice.

The essence of my amendment is to say that we need to strengthen the safeguards against inappropriate placements. The independent review of the Mental Health Act agreed with that. It recommended that, when a child or young person is placed on an adult

[Earl Howe]
ward, the CQC should be informed within 24 hours; at the moment it is 48 hours. It also said that the reason for the placement and its duration should both be recorded. Correspondingly, the Joint Committee on the Draft Mental Health Bill recommended a tightening up of duties placed on hospital managers.

It was welcome to hear from the Minister that the Government intend to review the Mental Health Act code of practice, as well as the service specifications for children's and young people's mental health care. What I was hoping for, however, was that the Bill itself might now be amended to contain, unequivocally, some of the strengths and safeguards that I referred to.

My amendment is rather lengthy, but its key provisions can be summarised quite briefly. First, there should be much stricter and more explicit duties for hospital managers. Whenever a child is admitted to an adult ward, there should be a laid down process obliging the manager to record the fact of the admission, the justification for it, what the hospital is going to do to look after the child safely, and what they propose regarding transferring the child to a more appropriate setting. If a child continues to be accommodated in an adult ward for an extended period, the director of children's services in the appropriate local authority should be notified. In Wales, it would be the director of social services.

I also suggest this procedure should apply when a child is placed out of area and is held for an extended period. In other words, the whole issue around children in mental health hospitals runs wider. It is not just the CQC that should be under the spotlight. It should also be the local authority, which has the job of ensuring that children's well-being is protected.

Welcome as the government amendment is, it does not go nearly far enough. As well as the pledge to review procedures related to the CQC, I wish it contained, ideally, some indication that the Government recognise the need to review duties placed on hospital managers. In addition to the issue of children being admitted to adult wards, I also wish there were mention of children placed out of area.

Can the Minister reassure me that, in parallel with the review that the amendment is heralding, there will be a concerted effort to look at these other dimensions of the issue, whether that involves updating the mental health code of practice, the training of staff or, perhaps more fundamentally—recalling our debate on the first group today—what needs to be done in many more areas of the country to provide in-patient or outreach mental health services that are suitable for children and young people? It is the absence of such facilities in the first instance that gives rise to the problems that we are now discussing. I look forward to hearing what the Minister has to say.

Baroness Browning (Con): My Lords, very briefly, I added my name to this amendment, but I of course support the amendment from the noble Lord, Lord Meston—it is urgent to have an answer to that when the Bill proceeds.

I support all that my noble friend on the Front Bench said about children in adult wards, but I particularly focus on his request for attention to out-of-area placements. We know, from many of the cases that, sadly, we have had to debate in this House, that, when people are detained unduly—almost as though they are placed somewhere and the keys are thrown away—it is all too often because they are well away from their home base and from convenient visiting by relatives, and, as my noble friend said, often far away local authorities that might have had some sort of overview of them previously.

This is very difficult. We know that local authorities are stretched financially, and, presumably, keeping an eye on what is happening to somebody who has gone well out of their area has a clear cost implication. None the less, we are talking about children. Therefore, I support my noble friend and I hope the Minister will find a way forward to support these children.

Baroness Merron (Lab): My Lords, I thank all noble Lords across the House for their contributions during the debate on this group, the last of the evening. I am glad that both Front Benches welcome government Amendment 46, albeit I heard the noble Earl, Lord Howe, say that he had hoped that we would go further. I am glad that the other commitments made at the start of the debate were welcomed.

Amendment 58 was tabled by the noble Earl, Lord Howe, supported by the noble Lord, Lord Kamall. We agree with the intention of this amendment but do not believe that placing more limitations and prescriptions in legislation is the best vehicle to reduce the placement of children in certain settings.

In Committee, I set out existing measures to address and monitor this issue. The latest data from the CQC's *Monitoring the Mental Health Act in 2023/24* report shows that it was notified of 120 instances where a person under the age of 18 was admitted to an adult ward, which was a 38% decrease compared to 2022-23. I committed to set out guidance in the revised code on the process to determine whether a placement is in a child's best interests, and to ensure that safeguards are in place. NHSE will also do this in the new service specification—I will return to this point for the noble Baroness, Lady Browning. I hope that the additional commitments we have made in this debate show that the Government take this matter seriously and that we are committed to continuing to work on and address this issue.

To the point that the noble Baroness, Lady Browning, made about NHSE, I assure her that, as we work to bring the two organisations together—NHSE and DHSC—we will ensure that we continue to evaluate impacts of all kinds and that the functions currently undertaken by NHSE will continue along with that change. It will take some two years for the full process, including legislation, to take effect. However, admin changes are happening more immediately. The main thing of which I want to assure the noble Baroness is that the change into the future will not affect the commitments that we have given; they will continue, and without duplication.

Before I turn to Amendment 51, I will go back to the noble Earl, Lord Howe, who asked whether we would undertake a concerted effort to look at other directions of the issue, such as training and suitable in-patient or outreach mental health services. In response,

I can say that, subject to securing further investment, NHS England is developing a new model for specialised children and young people's mental health services, which will be supported by a new service specification and quality standards. The priority for these services is to transform and expand community services to make sure that there are local accessible community alternatives and to reduce the need for admission and dependency on in-patient beds, as well as reducing the length of stay and keeping young people closer to home. I hope that the noble Earl will appreciate that we are in the same place on this and that it is a matter of actually putting it into action.

I return to Amendment 51, which was tabled by the noble Lord, Lord Meston, and spoken to the noble and learned Baroness, Lady Butler-Sloss, and other noble Lords. We believe that the Mental Health Act is not the appropriate legislative vehicle to set out a statutory test for competence for under-16s, and nor would it be appropriate to seek to establish a test in a single setting. We are not satisfied that the possible implications for mental health in other settings where Gillick is applied have yet been fully explored.

The principle of Gillick competence is established in case law, as noble Lords will be aware, not statute. Any statutory test should reflect existing case law and would not necessarily override the application of Gillick outside the Act. The design of the test is partly aligned with the tests set out in the Mental Capacity Act. There is no consensus in the courts, as noble Lords will be aware, on whether it is appropriate to apply these tests to test competence in children under 16.

The noble Lord, Lord Meston, raised the question of unintended consequences, to which I am able to respond. The creation of any test that does not consider the interaction with existing case law could inadvertently limit the ability of children detained under the Act to exercise choice and autonomy under their care and treatment. Those are the concerns about unintended consequences.

We are also greatly concerned that, in seeking to provide clarity on assessing competence in mental health settings, two different tests could be created. This is likely to cause further confusion and a risk of legal challenge for decision-makers in mental health settings, potentially in any setting where Gillick is applied. This could have unintended consequences—I use that phrase again—for the ability of children to exercise choice and autonomy, as I have already mentioned, which I hear is counter to the noble Lord's intention.

The noble Lord will understand that we cannot comment on or prevent how, as I say, courts will interpret the test or whether there will be further calls for similar tests. The courts may even go as far as to apply this test in other settings. That is what we mean when we say the introduction of a test for decisions under the Act will or may cause confusion and uncertainty in other settings. We do not think the consequences of this have been given proper consideration, nor can this risk be appropriately mitigated. We will consult on the statutory guidance for assessing competence in mental health settings, as I have mentioned, in the revised code of practice. I hope that will meet the intention to provide further clarity.

The noble and learned Baroness, Lady Butler-Sloss, asked what additional support would be provided to clinicians in engaging with children and young people, as we are rejecting this amendment. The Mental Health Act code of practice already provides guidance on establishing competence in under-16s. As I have said, we will consult on the guidance in the revised code of practice. I also re-emphasise that we feel it is better to focus on improving the practical application of Gillick rather than create or risk further confusion.

I hear that there are differences of opinion. While I am sure that what I say will not completely satisfy noble Lords who have raised concerns, I hope it gives a sense of where we have got to and the reasons. I therefore hope that these reasons will convince noble Lords not to press their amendments.

Amendment 46 agreed.

Consideration on Report adjourned.

Non-Domestic Rating (Multipliers and Private Schools) Bill

Returned from the Commons

The Bill was returned from the Commons with reasons.

House adjourned at 9.32 pm.