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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Tuesday 19 April 2016

2.30 pm

Prayers—read by the Lord Bishop of Peterborough.

Crime: Historic Sex Abuse Allegations
Question

2.36 pm

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

To ask Her Majesty's Government what meetings have been arranged between Home Office ministers and the Commissioner of the Metropolitan Police on historic sex abuse allegation enquiries.

Lord Ashton of Hyde (Con): My Lords, Home Office Ministers have regular meetings with chief police officers on a wide range of subjects, but no meetings have taken place or been arranged between Home Office Ministers and the Metropolitan Police Commissioner on the subject the noble Lord has raised.

Lord Campbell-Savours (Lab): My Lords, is there not now a gross imbalance in the treatment of suspects and complainants in sex abuse cases, with the result that the reputations of the falsely accused are shattered while the reputation of the false accuser remains intact behind a wall of secrecy—particularly in the case of this man "Nick"—unless of course they are prosecuted? In that light, should Ministers not be spelling out to Sir Bernard Hogan-Howe that the leaking of operations in these cases and the subsequent identification of the accused, when often they are innocent, is an affront to human rights and natural justice? It is far too easy in this society to destroy the reputations of perfectly innocent people.

Lord Ashton of Hyde: My Lords, I have to acknowledge the noble Lord's persistence in this matter. I think he will appreciate that it is a complex one. We recognise that there is a difficult balance to strike between the operational advantages of naming suspects in some criminal investigations and respecting suspects' right to privacy. As my noble friend Lord Faulks said in answer to the noble Lord last month, Parliament itself has changed its mind on this issue. The Government's position is that although in general there should be a right to anonymity before the point of charge, there will be circumstances in which the public interest means that an arrested suspect should be named. The College of Policing guidance is that the police should not routinely release information about suspects before charge and that the decision to do so should be made on a case-by-case basis by a chief officer, and only when the circumstances justify it. Notwithstanding that, and bearing in mind what the noble Lord said about human rights and justice, the former High Court judge Sir Richard Henriques has been commissioned to examine the way in which recent cases involving non-recent sexual allegations have been conducted, and to report to the commissioner.

Lord Mackay of Clashfern (Con): To what extent do specific allegations have to be made before a large-scale investigation of someone's documents is initiated?

Lord Ashton of Hyde: I am afraid I do not know the answer to that. I will have to write to my noble and learned friend.

Lord Paddick (LD): My Lords, the Metropolitan Police Commissioner recently told me that there was a lot of evidence to justify police investigations of historic child abuse that could not be made public. What evidence have the police produced to reassure the Government that such investigations have not been deliberately protracted to give the impression that the allegations are being taken seriously? In the case of Paul Gambaccini, for example, it must have become apparent very quickly that the allegations were never going to be substantiated.

Lord Ashton of Hyde: The noble Lord will know full well that the Home Secretary does not get involved in operational decisions with the Met or with any police force. However, if there are concerns about this, there are of course well-known methods by which people can complain: to the individual force itself, to the IPCC, and to the police and crime commissioner.

Lord Blair of Boughton (CB): My Lords, I take a slightly different point of view from some of my colleagues in the House. I need to make it clear that I have no detailed knowledge of the individual historic sexual offence investigations to which the noble Lord, Lord Campbell-Savours, refers. I recognise that there are widespread concerns about the way the Met has acted, and indeed, on what I have read, I share some of them. However, I put it to the House that the commissioner appears also to have recognised this, as evidenced by his decision to apologise personally to some of the individuals and to appoint a retired High Court judge to inquire into his force's conduct. I therefore suggest to the Minister that the Home Office's job now is to urge the commissioner in the strongest possible terms to publish Sir Richard's report as soon as, and in as complete a form as, possible. Does the Minister agree?

Lord Ashton of Hyde: I agree with the noble Lord on much of that. Sir Richard Henriques has agreed to conduct the independent review, as we said, and the key findings of it and the recommendations will be published later this year. However, I must make the point that it is a private report for the commissioner and will contain sensitive things, so the whole report will not necessarily be published.

Lord Rosser (Lab): Given the high-profile nature of the historic sex abuse allegations inquiries issue, and given the questions raised about the appropriateness and fairness of the actions taken and the interventions

[Lord Rosser]
made by political figures and commentators, do the Government believe that this issue raises policy and strategic questions on which the Mayor of London or his deputy, as police and crime commissioner for the Met police, should have taken the lead; or do they still believe that this is merely an operational matter on which the Metropolitan Police Commissioner should make the key decisions on whether, and if so what, action should be taken?

Lord Ashton of Hyde: My Lords, the noble Lord raises a topical question, with the PCC elections coming up in May. The presumption of anonymity is a College of Policing guideline, and it expects that to be derogated from only when there are operational reasons for doing so; so that is a case for the chief officer of police, in the circumstances. The PCC holds the chief constable to account for the overall performance of the force, and the Mayor of London similarly holds the Commissioner of the Metropolitan Police to account. Paragraph 18 of the Policing Protocol Order 2011, which sets out the PCC's roles and responsibilities, says that,

"the PCC must not fetter the operational independence of the police force and the Chief Constable who leads it".

Lord Cormack (Con): My Lords, the noble Lord, Lord Blair, referred to apologies, but one thing that has caused widespread concern is that the apologies do not appear to have been as unequivocal as they should have been.

Lord Ashton of Hyde: My Lords, it is up to the commissioner in his private meeting with certain high-profile figures to deal with the matter in the way he thinks fit. One has to remember in these cases that there are sometimes public policy reasons why people's identities should be revealed. It is obviously a sensitive issue, but one has to remember that in child sexual abuse cases, by and large, these are under-represented people and we want to encourage as many of them as possible to come forward. They face tremendous obstacles in doing so and they must be supported.

BBC Royal Charter

Question

2.45 pm

Asked by ***Lord Fowler***

To ask Her Majesty's Government whether they will ensure that the details of the forthcoming Royal Charter for the BBC are subject to approval by both Houses of Parliament.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): For nearly 90 years a royal charter has been the constitutional basis of the BBC, underlying the independence of the BBC from political interference. The Government intend to hold debates in both Houses on the draft charter to provide the opportunity for Members to make their views known. The format of these debates has not been decided.

Lord Fowler (Con): Is not the trouble with what my noble friend has just set out that it is not the case? The decisions on the BBC charter review rest entirely and exclusively with the Government. No parliamentary legislation follows—there is no check. The Executive decide what the future of the BBC is going to be. Is the Minister aware that many of us feel that this is not the way to decide the future of one of the most important institutions in Britain today?

Baroness Neville-Rolfe: I am of course aware of strong feelings among colleagues in this House and I look forward to the debate that we have planned on this subject on Thursday. We have consulted on the way the BBC is enshrined and no strong argument is coming through to change the basis of a charter that has served us so well for 90 years.

Lord Pearson of Rannoch (UKIP): My Lords, what do the Government think of the suggestion that the members of the BBC's next ruling body—or perhaps a majority of them—should be elected by licence-fee payers and that that body should have the power to appoint and remove the chairman and the director-general?

Baroness Neville-Rolfe: My Lords, to help us to get the right answer we appointed the Clementi review, which reported, as the noble Lord will know, on 1 March. It has made a number of recommendations on how appointments should be made in future and we will be coming forward with our plans in May when we plan to publish the White Paper.

Lord Maxton (Lab): My Lords, is it not the case that the only people who represent the licence-fee payers are in fact elected to the other House along the corridor? Should they not therefore have the right to decide what is in the royal charter for the BBC and the power to amend it if they think fit to do so?

Baroness Neville-Rolfe: My Lords, I am sure these points will again be discussed on Thursday. We believe that a royal charter system, which lasts for a good period of time and allows an independent and impartial BBC to move forward, seems to be the right approach. We will come back to all these issues in our debates.

Lord Elystan-Morgan (CB): Will the Minister kindly confirm that when the final draft of the charter is settled, the position of the Welsh language will be fully considered and protected by way of an entrenched measure in the charter to the effect that the independence of S4C, the Welsh channel, is completely maintained, thus honouring a solemn undertaking given when the public utilities Bill passed through this House some years ago?

Baroness Neville-Rolfe: My Lords, S4C and the Welsh language are important and I think we have talked before about "Pobol y Cwm", which I used to watch on maternity leave. We have protected the funding at nearly £7 million and the BBC has confirmed that it will continue to protect its funding. Of course, there is a great creative operation in Cardiff, which I have visited, embracing both the Welsh BBC and S4C.

Lord Foster of Bath (LD): My Lords, the Minister talked about the charter lasting for a good period of time. To guarantee security for both planning and investment, will she ensure that the charter lasts for at least 10 years and that there is no attempt during any mid-term review to change it?

Baroness Neville-Rolfe: The length of time that the charter lasts will be one of the key issues that we address in the White Paper in May.

Lord Stevenson of Balmacara (Lab): My Lords, may I press the Minister on two points? First, she did not specifically answer the Question originally posed by the noble Lord, Lord Fowler, about whether the debates that she has promised will allow both Houses to approve the proposal to be made by the Government. Can she say yes or no to that, bearing in mind that when the debates were held the last time round an approval Motion was put down in the Commons? Secondly, on the timing, we heard last week in a debate in the other place that a draft White Paper had been sighted, and indeed may even have been read. Does that mean that we will in fact receive this in May, as promised?

Baroness Neville-Rolfe: Our plan and hope is that we will publish it in May, which was the original timing. In relation to votes, the Government will of course want to listen to the debate on the draft charter and respond accordingly, but I do not think that I can promise a vote.

Baroness McIntosh of Pickering (Con): My Lords, can my noble friend explain the Government's policy to the House? Why does the BBC not fall under the same regulatory regime of Ofcom as other media outlets do?

Baroness Neville-Rolfe: One recommendation from the Clementi review, which I mentioned earlier, is that in fact Ofcom might take responsibility for the BBC. That is obviously one of the recommendations that we are looking at and will be commenting on in May.

Lord Allen of Kensington (Lab): My Lords, it may surprise many noble Lords to hear that, having spent most of my professional career competing directly with the corporation, I am a great fan, and I absolutely do not support this market failure approach that many are promulgating. The BBC and many of its programmes are genuinely the envy of the world. What it needs is to be properly governed, properly regulated, with a very clear remit and licence for its services, and appropriately funded. The highly respected Communications Committee and the Select Committee in the House of Commons have made very significant contributions in their reports. I would urge the Minister to consider whether the debates in the House of Commons and the House of Lords might make a valuable contribution to the future success of the BBC.

Baroness Neville-Rolfe: I agree with the noble Lord that these debates are incredibly important. The BBC is part of the fabric of this country, and a source of great pride—and great support—for our creative industries.

Lobbying: Government Grant Agreements

Question

2.52 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government whether they have considered the effect on scientific and medical research, the arts, campaigning organisations and other bodies of the anti-lobbying clause in government grant agreements to be introduced on 1 May as a condition of public funding.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, grant recipients can continue to discuss the findings of publicly funded research with government or Parliament, whether that be by giving evidence or in an advisory capacity. The clause in question is about making sure that taxpayers' money is spent as intended and not diverted from good causes to fund political campaigning and lobbying.

The Earl of Clancarty (CB): My Lords, does not the Minister believe that a healthy, open society not only allows but actively encourages the use of public money given out as grants to question the status quo, to challenge the Government over policy when felt necessary and, indeed, to make constructive recommendations for new policy? This is an essential aspect of the national public debate. This clause threatens that, will damage democracy and should be scrapped.

Lord Bridges of Headley: My Lords, I fear that there is a fundamental point of principle on which I cannot agree with the noble Earl, who I know holds passionate views on this subject. This is about making sure that the many billions of pounds of taxpayers' money that go to grant recipients are spent on the original allocation of the grants and do not find their way into political lobbying and campaigning.

Lord Wigley (PC): My Lords, does the Minister accept that many charitable organisations falling within the purview of this Question are fearful of voicing their opinion in the context of the referendum on the European question? Will he make it clear to all such organisations that they will not be penalised under any circumstances for voicing their opinion, on whichever side that may be, in the context of the referendum?

Lord Bridges of Headley: The noble Lord makes a good point. The Charity Commission has published guidance for charities that may wish to participate in debates on the forthcoming EU referendum. The commission's guidance reflects the existing legal position that charities can undertake campaigning and political activity where it is in support of their charitable purposes and where the trustees consider it to be in the interests of the charity.

Lord Deben (Con): My Lords, is it not important that we err on the side of freedom? And is not it true that, almost universally, what the Government intend to do is seen to be a bar to freedom of expression? Should not the Government think again before they get a reputation of being a bit lily-livered about opposition?

Lord Bridges of Headley: I am very sorry to say that, on this point, I disagree with my noble friend. As I said, it is not about curbing freedom of speech; it is about making sure that taxpayers' money is spent effectively and goes where it was meant to go.

Lord Taverne (LD): My Lords, do the Government recognise that this anti-lobbying clause is going to have a serious impact on research, since most people do research in order to influence policy and make it more evidence-based? Is it not odd that this in fact does not apply in any way to commercial lobbying and restricts only government-funded lobbying? Should not its real emphasis be on the control of the abuse of funds, as with Kids Company? Would it not be wise in the present circumstances to postpone the application of this new agreement until after 1 May so that further consultation can take place on this very important threat to the freedom of research and speech?

Lord Bridges of Headley: I heed what the noble Lord is saying. I have certainly received concerns, as have other Ministers, from the research and academic community. Clearly, the implementation of this clause as regards science and research is a matter for the Department for Business, Innovation and Skills. Let me tell your Lordships that it is not the department's nor the Government's intention for research councils, the Higher Education Funding Council or the national academies to be covered by this clause. Ministers in BIS are continuing to engage with the academic research community and they will outline more detail by 1 May.

Lord Krebs (CB): My Lords, could the Minister tell this House at what point in the process the Government's Chief Scientific Adviser, Sir Mark Walport, was consulted about the impact on scientific research? Could the Minister also inform the House of Sir Mark's response?

Lord Bridges of Headley: I am sorry to say that I cannot go into great detail on that, as I am not furnished with that information. However, obviously there have been conversations with Sir Mark and others in the scientific community.

Baroness Hayter of Kentish Town (Lab): My Lords, the press release that announced this said that it was as a result of research done by the IEA—so that lobbying led to this, with no consultation either with the academic world or anyone else. If I have understood the Minister, he is now willing to exempt academic research but not research carried out by other organisations, be they charities, the Marine Management Organisation, English Heritage or any others. Will the Minister consult with them before they are restricted from giving information to Parliament, government and, under the rules, to the European Union?

Lord Bridges of Headley: My Lords, I understand what the noble Baroness is saying. Her concerns have been heeded in the sense that the consultation on the implementation of this clause began the minute that the clause was announced in February. As regards curbing freedom of speech by charities, that is not the case. Let me remind your Lordships that charities make up only 7% of grant spend. Charities can continue to use any other funds to lobby government. Indeed, in the DCLG, where this clause has been in place for the past 18 months, Shelter, which has been receiving a grant from the DCLG, has continued to lobby this House and the other place on the contents of the housing Bill, for example.

Lord Naseby (Con): My Lords, could we remind the House that this public money has come from taxation of well-off people, poor people and other people throughout the kingdom? The money is there to be granted for useful purposes; it is not there to pay for campaigning and lobbying. It is public money. If people want to campaign or lobby—I have lobbied and given money for lobbying—it should not be done with public money.

Lord Bridges of Headley: It will not surprise your Lordships that I agree with my noble friend. As I said, £130 billion is paid out in grants, and it is absolutely concomitant on any Government to ensure that that money goes to where it is meant to go.

Lord Winston (Lab): My Lords, would the Minister not consider something which occurred in this House? The hybrid embryo Bill, an area with which I am particular familiar, was an example of a piece of science and legislation for which this kind of lobbying and consultation was really important. It depended hugely on the advice that we got from research councils and other experts who lobbied. Even I, who have a detailed knowledge of much about science, learned from that process. Therefore, it greatly helped our debate and decision on the process, which in fact turned out well. It would be a mistake to ignore that.

Lord Bridges of Headley: I completely defer to the noble Lord's considerable experience in the scientific community. I say again that, if the grant is used to fund a public campaign to seek legislative or regulatory change, that would be in breach of the clause unless specified in the terms of the grant agreement. However, organisations are free to use their own funding to

publicise their research. It is therefore perfectly legitimate for the recipient of a grant to appear on the media or write press articles so long as that does not incur costs to the public purse.

Gaza: Electricity Supply

Question

3 pm

Asked by ***Lord Judd***

To ask Her Majesty's Government what immediate consultations they are having with their European Union partners and at the United Nations about how to respond to the breakdown of electricity generating capacity in Gaza and its consequences for water distribution.

The Parliamentary Under-Secretary of State, Department for International Development (Baroness Verma) (Con): My Lords, we are concerned by the electricity shortage in Gaza and the serious impact it is having on the humanitarian situation. We are in regular dialogue with Israel, the Palestinian Authority and other development actors, specifically the EU and the UN, on the extension of the 161 power line and the conversion of the Gaza power station to gas. Close to £475,000 in DfID funding is being used to support planning for the Gaza desalination plant.

Lord Judd (Lab): My Lords, I thank the Minister for that reply, but does she not agree that the people—the men, women and children—of Gaza have had enough? With this latest total breakdown in generating capacity, the water supply for drinking is at minimal, hazardous levels, and the water that is available is far from guaranteed to be pure. Does she also agree that we are in a situation where sewage is now just not being treated but is being pumped in increasing amounts into the sea—and that behind all this lies the complete failure within Gaza of an economy in any meaningful sense with which order can be established, services can be properly provided and the future can be carried forward? It is not just the humanitarian situation, which is bad enough. Surely this is a festering point for instability in the area and a playground for extremists, and it has implications way beyond Gaza itself.

Baroness Verma: My Lords, the noble Lord raises a series of very important points but ultimately, as he and other noble Lords will be aware, we need to encourage a two-state peace-process solution. That is what we, the UK Government, and others are encouraging. Ultimately, however, it is down to the two parties to make sure that they are fully engaged.

Baroness Deech (CB): My Lords, does the Minister weary of the obsessive blaming of Israel for whatever goes wrong in Gaza and the surrounding area? The failure in electricity appears to be due to Hamas and the PA. If they cannot manage their own electricity and water, what hope is there to expect Hamas, Gaza and the West Bank to run an independent state of Palestine?

Baroness Verma: My Lords, the noble Baroness again raises an important point, but the really important point is that we must encourage that the sorts of activities that are taking place are stopped so that we can further encourage the dialogue that needs to take place to bring forward a two-state solution and make sure that Hamas and others do not violate the rights of those who are being badly affected.

Baroness Hussein-Ece (LD): My Lords, the Minister has said that this is a humanitarian crisis. Some 1.8 million Gazans—more than 50% of whom are children—are subjected to a situation where they have no clean water. More than 90% of the water available to them is contaminated. This is not a political question, it is a humanitarian question. While those 1.8 million people are waiting for a two-state solution—on which Israel seems very reluctant to come to the table—children are being subjected to this cruelty. What pressure is being brought to bear to ensure that, in the year 2016, clean water is available to the people of Gaza?

Baroness Verma: My Lords, the UK Government, in dialogue with both Israel and the Palestinian Authority, are working hard with other donors, the UN, the World Food Programme and others to ensure that access is available to the things that the noble Baroness mentioned. However, this is a protracted humanitarian crisis and we need to be firm in our resolve to encourage the two players to come to the table so that the absolutely necessary two-state solution can be reached.

Lord Popat (Con): Is my noble friend aware that last month the Qataris offered to fully supply the power plant in Gaza, and that the Israelis accepted but President Abbas rejected? Is my noble friend in dialogue with her Palestinian counterpart on this very important issue?

Baroness Verma: My noble friend is right to raise the point about the pledges made at the Cairo conference by the Qataris and other donors to put money forward. We have succeeded in forwarding our pledge but we need to encourage all donors to fully disburse their pledges as well. I am not absolutely sure about my noble friend's reference to the reports but I know that pledges have been made and we need to ensure that everyone comes to the table with them.

Lord Collins of Highbury (Lab): My Lords, I was fortunate enough today to receive a letter from the Minister as a consequence of the recent debate of the noble Lord, Lord Hylton, on the Occupied Territories and, in particular, its water and electricity supply. Although I think everyone in the Chamber is committed to the peace process and the two-state solution, there is no reason, as my noble friend has indicated, why the two sides cannot talk about practical measures to deal with this matter. There have recently been discussions in Brussels in the Ad Hoc Liaison Committee. I wonder

[Lord Collins of Highbury]
if the Minister can inform the House what progress has been made in ensuring that the Palestinians respond to offers and that the Israelis do so as well.

Baroness Verma: The noble Lord is right: while we are discussing and pushing forward the two-state solution we need also to address issues such as safe water in Gaza. Those conversations have been taking place. We are in regular contact with the Israeli authorities responsible for the civil administration of the Occupied Palestinian Territories and have lobbied them to address Gaza's immediate, medium and long-term energy and clean water shortages and wastewater treatment. We need to make sure that we support them in that. The UK Government are also providing funding towards preparation of the documents needed for the Gaza desalination plant.

Hereditary Peers By-election
Announcement

3.07 pm

The Clerk of the Parliaments announced the result of the by-election to elect a Liberal Democrat hereditary Peer, in the place of Lord Avebury, in accordance with Standing Order 10.

A paper setting out the complete results is available in the Printed Paper Office and online. The successful candidate was Viscount Thurso.

Enterprise Bill [HL]
Commons Amendments

3.08 pm

Motion on Amendments 1 to 11

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

That this House do agree with the Commons in their Amendments 1 to 11.

1: After Clause 16, insert the following new Clause—

"Power of Welsh Ministers to apply regulators' principles and code of practice

In section 24 of the Legislative and Regulatory Reform Act 2006 (application of regulators' principles and code of practice to functions specified by order)—

(a) for paragraph (c) of subsection (3) (Wales: limit on power of Minister of the Crown to specify functions) substitute—

"(c) a Welsh regulatory function.";

(b) in subsection (4) (power of Welsh Ministers to specify functions) for "regulatory functions exercisable only in or as regards Wales" substitute "Welsh regulatory functions";

(c) in subsection (10) (definitions) at the appropriate place insert—

""Welsh regulatory function" means a regulatory function, so far as exercisable in relation to Wales, if or to the extent that the function relates to matters—

(a) within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006), or

(b) in respect of which functions are exercisable by the Welsh Ministers.".."

2: Clause 19, page 17, line 40, leave out "Welsh ministerial" and insert "devolved Welsh"

3: Clause 19, page 18, line 35, leave out "in Wales" and insert "in relation to Wales"

4: Clause 19, page 18, line 36, leave out "Welsh ministerial" and insert "devolved Welsh"

5: Clause 19, page 28, line 20, leave out "Welsh ministerial" and insert "devolved Welsh"

6: Clause 19, page 28, line 33, leave out "in Wales" and insert "in relation to Wales"

7: Clause 19, page 28, line 34, leave out "Welsh ministerial" and insert "devolved Welsh"

8: Clause 19, page 29, line 38, leave out "Welsh ministerial" and insert "devolved Welsh"

9: Clause 19, page 30, line 8, leave out "in Wales" and insert "in relation to Wales"

10: Clause 19, page 30, line 9, leave out "Welsh ministerial" and insert "devolved Welsh"

11: After Clause 19, insert the following new Clause—

"Devolved Welsh matters

(1) The Regulatory Enforcement and Sanctions Act 2008 is amended as follows.

(2) In each of the following provisions, for "Welsh ministerial" substitute "devolved Welsh"—

(a) in section 4 (meaning of "relevant function"), subsections (6) and (8)(b);

(b) in section 6 (guidance to local authorities), subsections (1) and (1A);

(c) in section 10 (advice to Welsh Ministers), subsection (1)(a);

(d) in section 12 (relationship between Secretary of State and other regulators), subsection (3);

(e) in section 16 (guidance or directions by Welsh Ministers), subsection (1);

(f) in section 36 (power to make orders providing for civil sanctions), subsection (2);

(g) in section 59 (consultation and consent for civil sanctions orders: Wales), subsection (2);

(h) in section 73 (functions to which duty not to impose or maintain unnecessary regulatory burdens applies), subsections (3)(c), (4)(c) and (5).

(3) In section 73 (functions to which section 72 applies), in subsections (3)(c) and (4)(c), for "in Wales" substitute "in relation to Wales".

(4) In section 74 (general interpretation)—

(a) omit the definition of "Welsh ministerial matter";

(b) before the definition of "Minister of the Crown" insert—

""devolved Welsh matter" means —

(a) a matter within the legislative competence of the National Assembly for Wales (see section 108 of the Government of Wales Act 2006), or

(b) a matter in relation to Wales in respect of which functions are exercisable by the Welsh Ministers,

and in this definition "Wales" has the same meaning as in the Government of Wales Act 2006;"."

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, this Bill will strengthen the UK's position as the best place in Europe to start and grow a business, and make sure people who work hard can succeed. When the Bill left this House for the other place, the noble Lord, Lord Mendelsohn, whom I see in his seat, rightly said that it was,

"certainly a better Bill than the one that arrived".—[*Official Report*, 15/12/15; col. 1985.]

Today, we welcome the Bill back to this House with further improvements and amendments.

Let me begin with the pubs provisions—always a favourite subject, since the men in my family love a pint. As part 2 of the government consultation on the Pubs Code confirmed, we do not intend to frustrate access to the market rent only option. Amendment 28 improves Clause 33 on the MRO by amending Section 43 of the Small Business, Enterprise and Employment Act to put beyond doubt that MRO will be available at rent assessment, irrespective of the level at which the rent is set. This has now been reflected in the draft Pubs Code regulations, which were laid on 14 April. These also satisfy the concerns and commitments relating to pubs made during the passage of the Small Business, Enterprise and Employment Act and at earlier stages of this Bill.

In particular, on parallel rent assessment, tenants can consider tied and MRO offers in parallel. Further, we have retained all the conditions in the Act that would entitle a tenant to request the MRO option. We said we would exempt genuine franchises from MRO, and we have done just that. Similarly, we have exempted tenancies at will and other short agreements that cumulatively last for no more than 12 months from most of the other provisions of the code, including from MRO. We have enabled pub-owning businesses and tied tenants to agree to defer for up to seven years the point at which MRO is available at a rent assessment and renewal, where the pub-owning business makes a significant investment. The minimum threshold for a significant investment is set at 200% of the pub's dry rent.

Amendment 29 tidies up Clause 34, which addresses concerns that pub companies were changing their practice to avoid application of the pubs provisions in the Small Business, Enterprise and Employment Act. These amendments make it clear: first, that potential unfair business practices occurring since the Small Business, Enterprise and Employment Act was passed in March 2015 are covered; secondly, that the adjudicator will report on avoidance of both the Act and the Pubs Code; and, thirdly, that territorial extent is in line with the SBEE Act pubs provisions.

The new Pubs Code Adjudicator, Paul Newby, has now been appointed and will take up post on 2 May, ahead of the Pubs Code coming into force. Mr Newby brings great experience of the sector and a reputation for professionalism. Let us give him the opportunity to show his worth.

I am very pleased with the progress that we have made on pubs in both Houses and, particularly, by working with stakeholders through the Pubs Code consultation. I look forward to a final discussion next month on the draft regulations, as Parliament considers the details of the code via the affirmative procedure.

The amendments in this group relating to Wales have been developed in agreement with the Welsh Government and will allow Wales to benefit from further or extended regulation-making powers in devolved areas in respect of the Regulators' Code, the primary authority scheme and business rates.

Lastly, we come to the amendments to the extent and commencement clauses. I hope noble Lords will accept my assurance that these amendments are technical and need no further debate.

I commend all these amendments to the House and I beg to move.

Lord Mendelsohn (Lab): My Lords, I thank the Minister for the progress we have made in matters relating to pubs. Throughout the Bill's progress, in both Houses of Parliament, we have seen the reversion of the original intention in the small business Act and have reinstated the parallel rent assessments; legislated for additional checks to ensure that pub companies do not game the code; reversed the decision to offer MRO conditional on there being an increase in rent; and ensured protection for tenants being offered investment in turn for opting out of MRO. I am tremendously grateful to the Minister for dealing with this extremely well and making sure that these amendments properly express what this House intended when it passed that amendment. I also congratulate the officials in the department, who have done a terrific job in restoring the balance that we hoped had been struck in the small business Act and making sure that these provisions are adequately catered for. We are tremendously grateful for that.

We welcome these amendments, but I will raise just a couple of technical issues on which I seek some clarity from the Minister. For the draft Pubs Code that has now been published, Regulation 3 states that every time a pub tenant wishes the adjudicator to be appointed to arbitrate on an MRO dispute, they must pay a fee of £200. Also, when an arbitration goes forward, there is the possibility of costs of up to £2,000 being awarded against tenants. We understand that this is to discourage vexatious complaints, given that tenants' conduct could result in an unreasonable increase in the costs of arbitration. However, I want to raise a couple of issues on that.

First, for tenants who are unfamiliar with how the code operates, it will be very useful to get some understanding of how it would apply to a tenant calling who lacks understanding about how this is done. Is the £200 fee an automatic charge, or is there some discretion available to the Pubs Code Adjudicator on how that might be levied for any inquiries? Certainly, given the lack of full understanding of how this code works, it would be extremely unwelcome if the fee stopped tenants coming forward with legitimate concerns.

Secondly, in relation to managing some of the issues around the code, obviously most tenants could not take reasonable legal advice or pay the costs of other sorts of advice. It is entirely plausible and possible that they may well add to the complication of the arbitration because they are not sufficiently skilled or sufficiently well resourced to add to the expertise that would be required to make sure that the costs can be minimised. We would hope that the Pubs Code Adjudicator would do some of those things. It would be useful, therefore, to have some sense of how these costs may act fairly rather than just as an impediment to tenants coming forward with complaints.

Finally, within six months of being established, the Pubs Code Adjudicator must issue guidance on the criteria that the adjudicator intends to adopt in deciding whether to carry out investigations and on the practices and procedures that the adjudicator intends to adopt

[LORD MENDELSOHN]
when looking at investigations. I would be grateful if the Minister could come back to this House, either in her response or in writing, about what input the Government will or could have, or what input this House could have, in this process. If there are any issues of concern with the procedures that are developed, what checks are in place to discuss and revise them, if necessary, after the Pubs Code Adjudicator delivers them?

Baroness Neville-Rolfe: I thank the noble Lord for his very constructive response and reiterate my thanks to all noble Lords who have engaged in this. I look forward to our further debate.

On fees, the adjudicator has a power to give advice, so that will not have a charge. Once a referral is made, a fee of £200 is due. I will look further at the detail of what the noble Lord has said, in case there is something I can add. I will also write on the point that he raised about the detail of the adjudicator, so that that is entirely clear as well.

I believe that the changes that we have made, as I think the noble Lord has said, to the SBEE Act legislation and to the draft Pubs Code regulations should mean that all concerned can support these measures as a balanced package to deliver greater fairness—a word that he used—in the relationship between tied pubs and the pub-owning businesses. I very much hope that the industry and the tenants can look forward to a prosperous future.

Motion on Amendments 1 to 11 agreed.

Motion on Amendments 12 to 17

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

That this House do agree with the Commons in their Amendments 12 to 17.

12: Before Clause 20, insert the following new Clause—

"The Institute for Apprenticeships

Schedule (The Institute for Apprenticeships) establishes the Institute for Apprenticeships and makes provision about its functions."

13: Before Clause 20, insert the following new Clause—

"The Institute for Apprenticeships: transitional provision

(1) Subsection (2) applies to—

(a) any standard approved and published by the Secretary of State under section A2 of the 2009 Act before the appointed day;

(b) any plan which—

(i) relates to the assessment of a person's attainment of outcomes set out in a standard mentioned in paragraph (a), and

(ii) was approved and published by the Secretary of State for the purposes of that assessment before the appointed day.

(2) Such a standard or plan is to be treated on and after the appointed day as having been approved by the Institute for Apprenticeships under section A2A of the 2009 Act and published by it under section A2 of that Act (as amended by Schedule (The Institute for Apprenticeships)).

(3) A standard or plan within subsection (1) is to be treated for the purposes of section A2I of the 2009 Act (as inserted by Schedule (The Institute for Apprenticeships)) as having been approved by the Institute for Apprenticeships at the beginning of the appointed day.

(4) This section does not limit the provision that may be made under clause 37.

(5) In this section—

"the appointed day" means the day on which section A2A of the Apprenticeship, Skills, Children and Learning Act 2009 (inserted by Schedule (The Institute for Apprenticeships)) comes into force;

"the 2009 Act" means the Apprenticeships, Skills, Children and Learning Act 2009."

14: Clause 20, page 36, line 25, after "employment" insert "in England"

15: Clause 20, page 36, line 31, after "employees" insert "employed in England"

16: After Clause 21, insert the following new Clause—

"Apprenticeships: information sharing

(1) After Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (apprenticeships, study and training) insert—

"Part 1A

APPRENTICESHIPS: INFORMATION SHARING

England

40A Sharing of information by HMRC and the Secretary of State

(1) HMRC may disclose information held by them to the Secretary of State for the purpose of the Secretary of State's functions in relation to English statutory apprenticeships.

(2) The Secretary of State may disclose information to HMRC—

(a) for the purpose of requesting HMRC to disclose information under subsection (1), or

(b) for another purpose connected with the Secretary of State's functions in relation to English statutory apprenticeships.

(3) In this section "English statutory apprenticeships" means—

(a) approved English apprenticeships within the meaning given in section A1;

(b) apprenticeships undertaken under apprenticeship agreements within the meaning given in section 32 that were entered into in connection with recognised English frameworks;

(c) apprenticeships in relation to which alternative English completion arrangements apply under section 1(5);

(d) apprenticeships undertaken under arrangements made in relation to England under section 2 of the Employment and Training Act 1973 that are identified by the person making them as arrangements for the provision of apprenticeships.

Wales, Scotland and Northern Ireland

40B Sharing of information by HMRC and devolved authorities

(1) HMRC may disclose information held by them—

(a) to a Welsh authority for the purpose of the authority's functions in relation to Welsh apprenticeships;

(b) to a Scottish authority for the purpose of the authority's functions in relation to Scottish apprenticeships;

(c) to a Northern Irish authority for the purpose of the authority's functions in relation to Northern Irish apprenticeships.

(2) An authority mentioned in paragraph (a), (b) or (c) of subsection (1) may disclose information to HMRC—

(a) for the purpose of requesting HMRC to disclose information to the authority under subsection (1), or

(b) for another purpose connected with the authority's functions mentioned in subsection (1).

(3) In this section—

"Northern Irish apprenticeships" means apprenticeships undertaken under arrangements made under section 1 of the Employment and Training Act (Northern Ireland) 1950 that are identified by the person making them as arrangements for the provision of apprenticeships;

"Northern Irish authority" means—

(a) a Northern Ireland department, and

(b) any body or other person that is prescribed, or of a prescribed description;

"Scottish apprenticeships" means apprenticeships undertaken under arrangements made—

(a) in relation to Scotland, under section 2 of the Employment and Training Act 1973, or

(b) under section 2(3) of the Enterprise and New Towns (Scotland) Act 1990,

that are identified by the person making them as arrangements for the provision of apprenticeships;

"Scottish authority" means—

(a) the Scottish Ministers, and

(b) any body or other person that is prescribed, or of a prescribed description;

"Welsh apprenticeships" means—

(a) apprenticeships undertaken under apprenticeship agreements within the meaning given in section 32 that were entered into in connection with recognised Welsh frameworks;

(b) apprenticeships in relation to which alternative Welsh completion arrangements apply under section 2(5);

(c) apprenticeships undertaken under arrangements made in relation to Wales under—

(i) section 2 of the Employment and Training Act 1973, or

(ii) section 17B of the Jobseekers Act 1995,

that are identified by the person making them as arrangements for the provision of apprenticeships;

"Welsh authority" means—

(a) the Welsh Ministers, and

(b) any body or other person that is prescribed, or of a prescribed description.

(4) In subsection (3)—

(a) the reference to a Northern Ireland department includes a reference to a person providing services to a Northern Ireland department;

(b) the reference to the Scottish Ministers includes a reference to a person providing services to the Scottish Ministers;

(c) the reference to the Welsh Ministers includes a reference to a person providing services to the Welsh Ministers.

(5) Regulations under this section may amend the definition in subsection (3) of—

(a) "Northern Irish apprenticeships",

(b) "Scottish apprenticeships", or

(c) "Welsh apprenticeships".

General

40C Wrongful disclosure

(1) Information disclosed by HMRC under section 40A(1) or 40B(1) may not be disclosed by the recipient of the information to any other person without the consent of HMRC (except so far as permitted by section 40A(2) or 40B(2)).

(2) If a person discloses, in contravention of subsection (1), any revenue and customs information relating to a person whose identity—

(a) is specified in the disclosure, or

(b) can be deduced from it,

section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.

40D Interpretation

(1) In this Part—

"HMRC" means the Commissioners for Her Majesty's Revenue and Customs;

"revenue and customs information relating to a person" has the same meaning as in section 19 of the Commissioners for Revenue and Customs Act 2005 (see section 19(2) of that Act).

(2) In this Part—

(a) references to HMRC include references to a person providing services to HMRC;

(b) references to the Secretary of State include references to a person providing services to the Secretary of State.

(3) Nothing in this Part affects any power to disclose information that exists apart from this Part."

(2) In section 262(6) of that Act (orders and regulations subject to affirmative procedure) after paragraph (aa) insert—

"(aaa) regulations under section 40B;".

(3) In section 268 of that Act (extent)—

(a) in subsection (2) (provisions extending to Scotland) for "Sections 40," substitute "Section 40, Part 1A, sections", and

(b) in subsection (3) (provisions extending to Northern Ireland) for "Sections", in the first place, substitute "Part 1A, sections"."

17: After Clause 21, insert the following new Clause—

"Apprenticeship funding

In section 100(1A) of the Apprenticeships, Skills, Children and Learning Act 2009 (provision of financial resources in connection with approved English apprenticeships)—

(a) for "approved English apprenticeships", in both places, substitute "English statutory apprenticeships", and

(b) after subsection (4) insert—

"(5) In this section "English statutory apprenticeship" has the same meaning as in section 40A (see subsection (3) of that section).""

Baroness Neville-Rolfe: My Lords, the Government have brought forward these amendments to establish the new Institute for Apprenticeships. We have done a lot on apprenticeships, and the results are promising. On the apprentices side, 89% of apprentices said they are satisfied with their apprenticeship, and 82% of employers said they were satisfied with their programme. To build on this, and to deliver more world-class apprenticeships, we need to support employers in maintaining the quality of their apprenticeships.

A new and independent public body, the Institute for Apprenticeships, is being established to ensure the quality of apprenticeship standards across all sectors in England. Although the focus for its activities will be recommended by government annually, the institute will be free to determine its own processes and make autonomous decisions in relation to its functions, responding to employer and apprentice needs. Employer groups will continue to develop the content of standards and assessment plans. The institute will ensure that they are fit for purpose by scrutinising the standards and the plans. Sector and assessment experts, academics and others, will help the institute to carry out these functions. In addition, the institute will carry out some wider quality assurance functions, including making arrangements for evaluating the quality of the end-point assessment for apprenticeships. Our objective is to ensure, through the Institute for Apprenticeships, that quality remains at the heart of approved English apprenticeships, whether they are with the biggest international companies or in small craft businesses.

Amendments 14 and 15 clarify the information that public sector organisations subject to apprenticeships targets should provide to the Secretary of State to ensure consistency and clarity of reporting.

On Amendments 16 and 17, as noble Lords know, the current Finance Bill introduces the apprenticeship levy, which will fund a step change in apprenticeship numbers and quality and deliver on the commitment

[Baroness Neville-Rolfe]
of 3 million apprenticeship starts by 2020. For employers to get the full benefit of the levy, we need to know what they have contributed. Data sharing between HMRC and the Secretary of State for BIS is the most effective way of doing this and the least burdensome for business. Amendment 16 will enable information held by HMRC on an employer's levy due to be shared, so that the Government will be able to match apprenticeship funding in England to the levy payments made by each employer by creating individual employer digital accounts. Similar data-sharing powers are provided to devolved Administrations to manage their apprenticeship schemes. From April 2017, we intend to apply a 10% top-up to levy funds paid to employers' digital accounts to spend on apprenticeship training in England. Levy-paying employers in England will therefore be able to get out more than they put in if they are committed to training apprentices—a very important principle. Amendment 17 is technical and uncontentious.

I commend these amendments to the House, and I beg to move.

Lord Stevenson of Balmacara (Lab): My Lords, the Minister said when she introduced the first set of amendments that the Bill was now in better shape than when it started. We can all agree with that, in particular with reference to apprenticeships. These amendments fill a lacuna in the area of apprenticeships, which we pointed out in Committee and on Report. Indeed, we tried very hard to get some movement from the Government on this but were rebuffed robustly, as is the noble Baroness's way, albeit in a very gentle and appropriate manner. Therefore, it is all the more of a pleasure to see these amendments come back, which, in some senses, begin to address some of the big issues about what we need to do as a country to ensure that the apprenticeship route for vocational education is acknowledged, and made attractive to parents and the young people who might wish to take them, as has sadly been lacking for too many years.

However, there are some issues with the proposals, which I do not want in any sense to use to argue against them, but although we have some movement here there are still quite a lot of questions that have to be resolved. We will watch this with interest. I suspect—although I have no knowledge of this—that it might be something that your Lordships' House may have to deal with as we go forward. For instance, the focus is rightly on trying to ensure that apprenticeships are of a high quality, but there is very little detail on what the new institute will do on that, and what it might not, at this stage, be appropriate to do. It has a good foundation with the people on it, but perhaps in its staffing it does not reach as far as it could towards issues that might give some reassurance that they are thinking about the quality levels. There is a problem about the age at which apprenticeships are offered. There are still too many people aged between 23 and 30 and not enough aged between 18 and 24. To what extent will the IFA have the tools to deal with that?

There is an assumption throughout a lot of people's discussions and debate about apprenticeships that the focus will be on STEM subjects. In fact, I am sure the Minister will agree that there is just as much need to ensure that we have apprenticeships across the creative and other industries which supply so much of our national growth and which are being relied on to make sure that our economy is diversified—"STEAM", not STEM, might be a better way of putting it. In case there is any doubt about that, the "A" stands for the arts and the creative industries.

These proposals do not deal with what is going to happen to our colleges. Many FE colleges are going through periodic and differential reviews and their future does not seem at all clear. They are obviously very nervous about how this will happen. Again, we would not seek to do this through the Bill, but we need more clarity about what the infrastructure that will receive the ministrations of the IFA will be able to do.

Finally, the question of the vocational education and the sort of provision that is required to provide an interlacing approach for children leaving school and going on to higher and further education is not yet fully mapped out, although I am sure that the aspirations are there. We will need to spend more time on that—perhaps when the White Paper turns into a higher education Bill we will have that opportunity. However, at the bottom of all that there is a really difficult problem about productivity. The test will be, at the end of the day, whether the IFA has anything to offer us in terms of improving productivity in this country, which is sadly lagging behind our competitors. If it does, all power to it; if it does not, we may have to revisit it; but in the interim it is an exciting development, we wish it well and we welcome these clauses.

Baroness Neville-Rolfe: My Lords, I thank the noble Lord for his comments and for his help in filling the lacuna that he identified. I share his wish to see apprenticeships as a really attractive option for school leavers. We will be making more information available on funding and on the detail of how the new arrangements will work from next year. I hope that this will answer the noble Lord's outstanding questions. He makes a good point about what we do for the younger apprentices and how that fits in with the older ones. I agree that while we need a focus on STEM we actually need apprenticeships right across the board and that the creative and digital industries are an incredibly important area. My friend in the other place, Ed Vaizey, slaves and steams day and night trying to ensure that that aspect is grabbed right across Whitehall.

What I like about the Bill is that it builds on earlier legislation to ensure that apprenticeships are real jobs with substantial and sustained training. The reforms are making apprenticeships more rigorous already and will ultimately help people to realise their potential. It will allow them to have a portfolio, so that they can move jobs if that is what they want to do. We are committed to ensuring that all apprenticeships are of high quality and this has been central to our reforms, as the House knows. High-quality apprenticeships are essential to support our employers and to help our economy prosper in the years to come. I believe that these additions to the Bill improve it and I trust that the House is happy to welcome these amendments.

Motion on Amendments 12 to 17 agreed.

Motion on Amendments 18 to 26

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

That this House do agree with the Commons in their Amendments 18 to 26.

18: Clause 26, page 43, line 31, after "English list" insert "or a Welsh list"

19: Clause 26, page 44, line 5, leave out "Consolidated Fund" and insert "appropriate fund"

20: Clause 26, page 44, line 14, after "English list" and insert "or a Welsh list"

21: Clause 26, page 44, line 24, leave out "Consolidated Fund" and insert "appropriate fund"

22: Clause 26, page 44, line 27, at end insert—

"( ) After subsection (7A) insert—

"(7B) For the purposes of subsections (4B)(b) and (5A)(d) "the appropriate fund" means—

(a) where the provision made by virtue of subsection (4A)(c) or (5) is in relation to a proposal to alter an English list, the Consolidated Fund, and

(b) where the provision made by virtue of subsection (4A)(c) or (5) is in relation to a proposal to alter a Welsh list, the Welsh Consolidated Fund.""

23: Clause 26, page 44, line 39, at end insert—

""Welsh list" means—

(a) a local non-domestic rating list that has to be compiled for a billing authority in Wales, or

(b) the central non-domestic rating list that has to be compiled for Wales.""

24: Clause 26, page 44, line 47, leave out from "unless" to end of line 48 and insert "—

(a) where those regulations relate to a proposal to alter an English list, a draft of the instrument has been laid before and approved by a resolution of each House of Parliament;

(b) where those regulations relate to a proposal to alter a Welsh list, a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales."

25: Clause 26, page 45, line 2, leave out from "is" to end of line 3 and insert "—

(a) in the case of regulations relating to England, subject to annulment in pursuance of a resolution of either House of Parliament;

(b) in the case of regulations relating to Wales, subject to annulment in pursuance of a resolution of the National Assembly for Wales."

26: Clause 26, page 45, line 3, at end insert—

"(3G) In subsection (3E), "English list" and "Welsh list" have the same meaning as in section 55."

Motion on Amendments 18 to 26 agreed.

Motion on Amendment 27

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

That this House do agree with the Commons in their Amendment 27.

27: After Clause 26, insert the following new Clause—

"Sunday working

Schedule (Sunday opening hours: rights of shop workers), which contains amendments of employment legislation relating to the rights of shop workers to opt out of working on Sunday, has effect."

Baroness Neville-Rolfe: My Lords, this group of amendments introduces measures to strengthen rights for shop workers in England and Wales and in Scotland by amending the Employment Rights Act 1996 and the Employment Act 2002.

We are no longer pursuing the devolution of powers to extend Sunday trading hours, which these measures were designed to complement.

3.30 pm

These amendments essentially make four changes. First, they reduce the notice period for shop workers at large shops to opt out of Sunday working altogether, from three months to one month. Secondly, they create a new right for shop workers to opt out of working additional Sunday hours, again subject to one month's notice at large shops and three months at smaller shops. Thirdly, they update the obligation on employers to notify shop workers of these rights. This includes a duty to notify existing as well as new shop workers. Lastly, they strengthen the consequences for employers who fail to comply with the notification requirements. Under these measures, as well as having stronger opt-out rights, shop workers will be clearer about what those rights are, how to exercise them and what to do if they suffer retribution. I beg to move.

Lord Stevenson of Balmacara: My Lords, when it was first introduced, this Bill was described as a Christmas tree Bill, as have a number of Bills from the Minister's department. Therefore, it is a particular pleasure to receive a Christmas present at the end of the process in the form of a wholly unlooked for, but none the less very welcome, strengthening of the powers that now apply to people who have to work within the existing legislation on Sundays.

I am not sufficiently expert in Whitehall matters to know how long it would have been until an appropriate Bill came round and these very important issues would have been taken on their merits. Of course, as the noble Baroness said—she did not give us the gory detail—there was a bit of a circuit round Whitehall to find, first, a Bill that would take the devolution proposals and then a Minister willing to put the proposals into a Bill. Indeed, I seem to remember the noble Baroness saying at a meeting, perhaps informally, that the last thing she wanted to see in her Bill was a measure involving Sunday trading. She has had to concede a very important set of small paragraphs which will help people who currently work on Sunday, and we are delighted to have them.

This should go down as one of those case studies that appear in books describing how awful Whitehall can be sometimes, because at the meetings I went to we could never work out what the Government were trying to do. Was this about tourism or an attempt to defeat the incursion of internet shopping into our high streets? Was it to promote high streets? Was it to make sure that smaller shops in smaller towns were supported? It never really got sorted out. As one of the participants at the meetings, the right reverend Prelate pointed out that at the end of the day, unless you sorted this out in a holistic way, involving the staff from the beginning, it simply would not happen

[LORD STEVENSON OF BALMACARA]
—and it did not. With that ringing in our ears, we welcome this proposal and look forward to its early implementation.

Lord Alton of Liverpool (CB): My Lords, before we leave this group of amendments, I echo something that the noble Lord, Lord Stevenson, said a moment or two ago about the importance of protecting workers' rights. I was involved in the original legislation when it was enacted and spoke in another place about protecting workers who wanted to opt out of having to work on Sundays, and I moved amendments that excluded Christmas Day and Easter Day—two of the very few amendments that were successful at that time.

To some extent, these amendments merely tinker with the protections provided previously. A lot of evidence has been gathered in the years since the enactment of the original legislation which indicates that those protections need strengthening further. I simply refer the Minister to what one of her predecessors —the noble Lord, Lord Sassoon—promised Parliament back in 2012, on 24 April, when he spoke at the Second Reading of the Sunday Trading (London Olympic and Paralympic Games) Bill. He said that Parliament would have the opportunity fully to debate the issue of Sunday trading restrictions if the issue were revisited. I simply ask the Minister why it therefore required the intervention of notable Members of Parliament such as Mr David Burrowes and the redoubtable Fiona Bruce, who worked across the divide to defeat the Government's proposals, to prevent something being stampeded through without proper parliamentary scrutiny. Why was the promise given to the House in 2012 not honoured? Why did we not have a debate about this when it was in your Lordships' House in the first instance, before it went to another place? Perhaps the Minister will shed light on that.

The Minister will know that there were some 7,000 responses to the consultation process the Government initiated. It would be a great breach of trust in the future—at a time when trust is not held in very high esteem by many people when looking at Parliament and politics—if we were both to ignore the responses to the consultation process and circumvent the promises Ministers have previously given. If any further changes are intended, will there be the opportunity for full parliamentary scrutiny? Can we please not use such methods, which, in the end, it took members of the Minister's own party in the House of Commons to prevent the Government from proceeding with in a very high-handed way?

Lord Mackay of Clashfern (Con): I associate myself with a good deal of what the noble Lord, Lord Alton of Liverpool, has said. In particular, strengthening the rights of those in the retail trade in relation to Sunday trading is very important. I am glad that, however it has come about, it has ultimately been a government proposal which I hope noble Lords will agree to very quickly.

Baroness Neville-Rolfe: I thank the noble Lord, Lord Stevenson, for his comments. I am also grateful for the welcome for these changes from the noble Lord, Lord Alton, and my noble and learned friend Lord Mackay of Clashfern. The provisions on Sunday trading were still being developed when the Bill was in the House. This is one of the reasons why I did not expect to be leading a discussion on Sunday trading. As noble Lords have said, the measures were originally intended as part of a much wider package, including measures on Sunday trading hours. The House of Commons spoke clearly; it had a debate; it has left the enhancement of shop workers' rights in the Bill and this has been welcomed. We have not, therefore, had the chance for a full debate but it is good that we have had today's debate.

In conclusion, some shop workers can still face pressure to work on Sundays, despite existing measures to protect them. This strengthening of shop workers' rights makes it clear that this should not be the case. I beg to move.

Motion on Amendment 27 agreed.

Motion on Amendments 28 and 29

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

That this House do agree with the Commons in their Amendments 28 and 29.

28: After Clause 31, insert the following new Clause—

"Market rent only option: rent assessments etc

In section 43 of the Small Business, Enterprise and Employment Act 2015 (pubs code: market rent only option), in subsection (6)(b), after "in lieu of rent" insert "(whether or not it results in a proposal that the rent, or amount of money payable, should increase)"."

29: After Clause 31, insert the following new Clause—

"Reports on avoidance

In Part 4 of the Small Business, Enterprise and Employment Act 2015 (the Pubs Code Adjudicator and the Pubs Code), after section 71 insert—

"71A Reports on avoidance

(1) The Adjudicator must report to the Secretary of State on cases of pub-owning businesses engaging in business practices which are, in the Adjudicator's opinion, unfair business practices.

(2) A report under subsection (1) must include recommendations as to—

(a) actions to be taken to prevent pub-owning businesses from engaging in the business practices reported on, and

(b) how to provide redress for tied pub tenants affected by those practices.

(3) The Secretary of State must issue a statement within three months of receiving a report under subsection (1) setting out—

(a) action which the Secretary of State intends to take to protect tied pub tenants affected by the business practices reported on, or

(b) if the Secretary of State does not intend to take such action, the reasoning for that decision.

(4) In this section "unfair business practice" means a business practice which—

(a) is engaged in by a pub-owning business at any time after the passing of this Act in order to avoid, to the detriment of tied pub tenants, the operation of provision made by or under this Part, and

(b) is unfair.""

Motion on Amendments 28 and 29 agreed.

Motion on Amendment 30

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

That this House do agree with the Commons in their Amendment 30.

30: Clause 32, page 48, line 23, leave out Clause 32

Baroness Neville-Rolfe: My Lords, Amendment 30 removes the provision, introduced on Report by the noble Lord, Lord Teverson, regarding the Green Investment Bank. I pause to pay tribute to the noble Lord. I am very grateful for his thoughtful and well-reasoned proposal, which requires a special share to be created to protect the green purpose of the bank when it leaves public ownership. We were all in the same place on this objective and he helped the Government find a way through.

As the noble Lord and I have discussed, there is a significant risk that mandating this structure in the legislation itself would prevent the bank moving to the private sector, so the Government needed to remove the provision from the Bill. However, there will instead be a special share held by a separate company, independent from Government, which will have the right to approve—or, equally importantly, reject—any proposed change to the bank's green purpose as set out in its articles of association.

I can confirm that the Government have consulted with the Office for National Statistics, the body which determines whether an organisation is classified to the public or private sector, on the basis of internationally agreed rules. The ONS Economic Statistics Classifications Committee has formally opined that this special share should not prevent the bank moving to the private sector once it is sold. The noble Lord, Lord Mendelsohn, has suggested an amendment to bring out the ONS decision more clearly and I look forward to hearing his views on this. I am grateful to the noble Lord, Lord Smith of Kelvin, for his leadership of the bank and, as chairman of the bank, for updating noble Lords on progress in putting this special share in place. Those letters are in the House Libraries.

Noble Lords will be aware that the Government launched their sale of the Green Investment Bank last month. In launching the sale, we made very clear to the market and potential bidders that this special share model will be in place. We laid a report before Parliament on 3 March, which included details of our plans to create a special share as part of the sale process. I therefore commend Amendment 30 to the House, and I beg to move.

Amendment to the Motion on Amendment 30

Moved by ***Lord Mendelsohn***

At end insert ", and do propose Amendment 30B in lieu of the words so left out of the Bill".

30B: Insert the following new Clause—

"Green Investment Bank: Office for National Statistics classification

Where, prior to a sale of shares of a UK Green Investment Bank Company (as defined in section 31(2)), the Office for National Statistics ("ONS") has a duty to make an assessment of the Green Investment Bank concerning its classification as public debt for the purposes of the National Accounts, the ONS must publish a report outlining its reasoning and the steps it has taken to reach its decision."

Lord Mendelsohn: My Lords, before I speak to the amendment, I would like to congratulate noble Lords on the Liberal Democrat Benches for their work on this. The noble Lord, Lord Stoneham, made a very powerful speech in Committee. I pay extraordinary and particular tribute to the noble Lord, Lord Teverson, who has done a simply outstanding job in all the spadework that was done, and in speaking to a range of people; he has come up with a very elegant formula. I also congratulate the noble Lord, Lord Smith of Kelvin, and his colleagues at the Green Investment Bank, in moving to embrace this model. In fact, the special share provides for a much better Green Investment Bank and for the green purposes to be more extensive than they would have been with any form of government participation because of the state aid rules, so I think we are in a much better position.

The rationale behind this amendment relates, of course, to the problem we had in determining the structural issues. In June 2015, the Business Secretary announced the Government's intention to privatise the bank to allow it to borrow more capital without adding to government debt, as reported in *Business Green*. However, the ONS ruled that, in order for the bank to obtain status as a private body, the Government must repeal any of their involvement in or control over the Green Investment Bank's operation. As part of the privatisation process, the legislation in the Enterprise Bill, enshrining the Green Investment Bank's green ethos, must be removed from the statute. This requirement has prompted fears that the bank could be hijacked by a private investor seeking to make investments not aligned to its core values.

The department's November policy statement described the situation as follows:

"The decision on whether an organisation is classified to the public or private sector is made by the Office for National Statistics (ONS) and is considered in accordance with the EU-wide regulations, set out principally in the European System of Accounts 2010, (ESA 2010) and supplemented by guidance in the accompanying 'Manual on government deficit and debt'".

In the light of the Government's discussions with the ONS and HM Treasury, and the department's assessment of the regulations, it was clear that even if the Green Investment Bank was no longer owned by the Government, current legislation on the bank was highly likely to be assessed by the owners as constituting government control over it, preventing it being reclassified to the private sector. It also said that the ONS would be in a position to take a substantive decision on the bank's classification only once a transaction had actually taken place. Of course, that involves in part the question of contractual arrangements, but it is also about procedure.

This leads to a highly unsatisfactory process, which we faced when the Green Investment Bank provisions were first introduced into this Bill, which was something of a rush. It involved a lot of panicked conversations and an extensive repeal of existing legislation, without particular rhyme or reason being properly articulated. We have had an unseemly mess, which has only been

[LORD MENDELSOHN]
adequately resolved by the efforts of the noble Lord, Lord Teverson. That could all have been avoided if there had been a reasonable discussion and a proper statement of reasons by the Office for National Statistics.

We have to consider that there are other opinions about whether this provision would breach those rules, and whether what was being said was likely to be actually true. Many experts in this field, given the opportunity, would have liked to make the case that classification was not necessary and the ONS was not just being overly cautious, but went way beyond the mark in making such an assessment. Indeed, there are examples in other countries of similar models which statistical bodies have applied without any real difficulty.

Finally, from the discussions that have taken place I am led to believe that the provision of a special share and the new structure of the Green Investment Bank enhance its value and the possibility of the overall sale of the bank. It is sensible for us to put in not some form of government or parliamentary oversight but a broader ability for ONS decisions to be made public earlier, for experts and practitioners in this field to have the chance to review them, and for the ONS to make a much more timely assessment and make those reasons well known. This is a simple amendment, which we hope the Government will look at carefully and consider a probable enhancement to the process as we look to change the status of certain assets in the Government's control and move them towards the private sector. This would be a helpful addition, and I beg to move.

3.45 pm

Lord Teverson (LD): My Lords, I thank the Minister very much for her kind words and the noble Lord, Lord Mendelsohn, for his great support and that of his colleagues all the way through this process. I also very much welcome the work and effort that the Minister put into persuading her ministerial colleagues to go down this route. I am sure that she was vital in that process. I hope that, because of this, as she said, all parts of the House are happy with the position we have reached and that the conditions which were put in the Bill will now be delivered in practice. As we have always said from these Benches, we were not really concerned with how it happened as long as it did happen. I am sure that we will have an institution which we in the United Kingdom, including the environmental movement and the financial community, can be proud of for many years to come, and that we will not face yet another generic financial institution with no real focus in the environmental area or anywhere else. We have avoided that happening in the longer term.

I want to speak briefly to Amendment 30B, in the name of the noble Lord, Lord Mendelsohn. We have had a number of discussions about the privatisation of the Green Investment Bank. One area of discussion was the frustration—I came to be very sympathetic to the Government over this—in trying to determine whether amending legislation would mean that an institution on which we were legislating ended up in the public or private sector. I read through all the guidelines published by Europe and the ONS on classification but it seems that, despite them, a lot of these issues are not straightforward. They are quite subjective in many ways. The nub of this—the noble Lord, Lord Mendelsohn, put this over very well—is that it gets in the way of the parliamentary process. If, because of a particular amendment or the way in which legislation is written, the Government cannot be certain at the end of that process whether a body is in the public or private sector, it means that they are forced to be conservative with a small "c" in estimating how an amendment should be phrased. That is not healthy for parliamentary debate or the way in which legislation is formed.

Although this is a limited amendment, I very much agree with its spirit. But I say to the House that this area needs to be investigated further. The amendment would not challenge in any way the independence of the ONS, which is clearly sacred; but its transparency and the way its decisions are made, pre-event as well as ex post, are extremely important. I wish the Green Investment Bank every continued success in its mission to stimulate the green economy. It has been successful in the past and I hope that, through its privatisation, it will be even more successful in the future.

Lord Hope of Craighead (CB): My Lords, the chairman of the Green Investment Bank, the noble Lord, Lord Smith of Kelvin, is not in his place this afternoon, but I am sure he would like it to be said on his behalf that he is grateful to the Government for agreeing to remove these three clauses from the Bill and to the noble Lord, Lord Teverson, for all the work that he has done to bring this solution about. I think it is right to say that as far as the chairman is concerned, his main aim in detaching the bank from the public sector is to attract investment. From his point of view, investment is vital if the bank is to fulfil its ambitious plans to double the size of its business and to deliver a growing green project—I am quoting from one of the letters which, as the Minister said, have been placed in the Library. So minimising the risk of the bank being classified as part of the public sector is part of the strategy of the noble Lord, Lord Smith, to attract investment, and from his point of view, the result of the amendments the Minister has moved will be to help him to deliver what he is seeking to deliver.

I think I should mention also that steps have been taken by the bank to make progress with the overall scheme that has been devised. A new special shareholder company has been incorporated and agreement from three very well-established and reputable institutions has been secured so that they will help the bank to find individuals to serve in a personal capacity as trustees of the special share that has been set up. The structures are now being put in place and the step being taken this afternoon is really the last in the series of steps to bring about the reality that the noble Lord, Lord Smith, has been seeking to achieve for some months. So, on his behalf, I repeat the thanks to various people, including the Minister, for what has been achieved.

Baroness Neville-Rolfe: My Lords, I thank all noble Lords, especially the noble Lord, Lord Teverson, for his gracious comments. This has been a brief but

constructive discussion. Let me reiterate that the Government not only support the intention of this provision but are already acting on it. I am also very grateful for the intervention of the noble and learned Lord, Lord Hope, speaking on behalf of the noble Lord, Lord Smith, who could not be here today. He rightly underlined the importance of the external investment that the Green Investment Bank is seeking to raise to realise its exciting green ambitions.

Working across this House, we developed a mechanism that meets our purpose. It allows the bank to move to the private sector, meaning that it can grow and increase its green impact, and it ensures that its green mission is protected. With regard to the amendment tabled by the noble Lord, Lord Mendelsohn, the ONS publishes its decisions routinely. Indeed, for some classification decisions, such as that of Royal Mail or Lloyds TSB, the ONS also provides detailed reasoning behind the classification decision. I can reassure the noble Lord that the ONS has confirmed that it will publish a detailed explanatory article on its decision on the classification of the GIB.

However, I must emphasise—this is the nub of the problem—that a decision on the GIB will be taken only after the sale has taken place. There is a reason for this. Until the ONS is able to look at the full facts of the matter, such as the legislation which exists at that point in time, the precise nature and number of the shareholders, their rights and so on, it cannot make a formal decision on which party is in control of the body, and hence on its classification. That is why the Government engage with ONS during the development of policy proposals, where ONS will give a formal, but provisional, classification assessment. That is what we did with the special share structure which the GIB is now putting in place. As I mentioned earlier, the ONS has given us a formal opinion that this structure should not prevent the GIB moving to the private sector.

The noble Lord, Lord Mendelsohn, rightly asked why the decision could not be published earlier. As I have said, the decision will come after the sale has completed. Until the full details, which would include legislation, ownership and contractual arrangements, are known, any judgment on who controls the body could only ever be provisional—so providing an earlier decision would not enhance certainty. Unfortunately, the nature of these assessments can be complex and cases can be time-consuming, although I am glad to say that the ONS publishes its forward work plan every quarter, which sets out the classification issues that it will be considering.

So what is the way forward? I understand noble Lords' frustration; I have to say that I shared it myself in spades on the question of public sector classification and the ONS's role. These concerns go wider than just the issue of the Green Investment Bank, and I am happy to undertake to bring them to the attention of my colleagues in the Treasury to see if anything can be done for future cases to help rightly risk-averse government Ministers.

I hope that we can all agree that we have reached a good outcome for the Green Investment Bank and wish it well, and I hope that in the circumstances the noble Lord will feel able to withdraw his amendment.

Lord Mendelsohn: My Lords, I thank the noble and learned Lord, Lord Hope of Craighead, and the noble Lord, Lord Teverson, for their comments about the good work of the noble Lord, Lord Smith of Kelvin, and the good wishes that we have for the bank's successful operation in the future.

I thank the Minister for her comments. I would just say that if you go to someone for a provisional view and they give it, you must have given them some assumptions for the basis of which they can take such a view, and you must have given them a potential range of assumptions. It is certainly true that a decision cannot be confirmed until the full facts are there, but some assumptions were given at the first stages in order to take that provisional view. All we are asking is to make sure that that view is made properly available because, as the noble Lord, Lord Teverson, said, so many of the measures are subjective. But I appreciate her comment that she will go back and look at what can be done. In light of that positive response, I beg leave to withdraw the amendment.

Amendment to the Motion on Amendment 30 withdrawn.

Motion on Amendment 30 agreed.

Motion on Amendments 31 and 32

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

That this House do agree with the Commons in their Amendments 31 and 32.

31: Clause 33, page 49, line 16, leave out Clause 33

32: Clause 34, page 49, line 38, leave out Clause 34

Motion on Amendments 31 and 32 agreed.

Motion on Amendments 33 to 39

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

That this House do agree with the Commons in their Amendments 33 to 39.

33: Clause 35, page 52, line 5, at end insert—

"( ) by the Welsh Ministers, in relation to relevant Welsh exit payments;"

34: Clause 35, page 52, line 25, at end insert—

"( ) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales."

35: Clause 35, page 52, line 30, at end insert—

"( ) In this section "relevant Welsh exit payments" means exit payments made to holders of the following offices—

(a) member of the National Assembly for Wales;

(b) the First Minister for Wales;

(c) Welsh Minister appointed under section 48 of the Government of Wales Act 2006;

(d) Counsel General to the Welsh Government;

(e) Deputy Welsh Minister;

(f) member of a county council or a county borough council in Wales;

(g) member of a National Park Authority in Wales;

(h) member of a Fire and Rescue Authority in Wales."

36: Clause 35, page 52, line 35, at end insert—

"(2A) The Welsh Ministers may relax any restriction imposed by regulations made by the Welsh Ministers under section 153A."

37: Clause 35, page 52, line 45, at beginning insert "except in relation to exit payments made by a relevant Welsh authority,"

38: Clause 35, page 53 leave out lines 16 to 22 and insert—

"(6) Regulations under section 153A made by the Welsh Ministers may—

(a) make provision for the power under subsection (2A) to be exercisable on behalf of the Welsh Ministers by a person specified in the regulations;

(b) where provision is made by virtue of paragraph (a), make provision for a requirement to be relaxed only—

(i) with the consent of the Welsh Ministers, or

(ii) following compliance with any directions given by the Welsh Ministers;

(c) make provision as to the publication of information about any relaxation of a requirement granted.

(6A) Regulations made by the Treasury under section 153A(1)—

(a) must, if they make provision in relation to exit payments made by a relevant Welsh authority, provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to those exit payments;

(b) may provide for the power conferred on a Minister of the Crown by subsection (1) to be exercised instead by the Welsh Ministers in relation to exit payments made by any other authority who is not a relevant Welsh authority but who wholly or mainly exercises functions in relation to Wales (but this does not limit the provision that may be made under subsection (4)(a))."

39: Clause 35, page 53, line 24, at end insert—

""relevant Welsh authority" means an authority who wholly or mainly exercises functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006)."

Baroness Neville-Rolfe: My Lords, I think that we are now on the homeward path. These amendments relate to public sector exit pay. A number of noble Lords have spoken on this subject. However, the amendments made in the other place that we are discussing today relate only to further regulation-making powers for Welsh Ministers in devolved areas. Specifically, the amendments enable Welsh Ministers to make regulations in respect of exit payments where they have devolved legislative competence for exit payments under the Government of Wales Act 2006. The amendments have been improved by the Welsh Assembly and I hope that noble Lords will also approve them. I beg to move.

Lord Hain (Lab): My Lords, I welcome what the Minister has just said in respect of Wales. I point out to her that that is exactly the argument that I and my noble friend Lady Morgan put forward on the Trade Union Bill when we said that these were devolved matters covering devolved public services and that it was a breach of the devolution settlement that the Trade Union Bill transgressed that. So I am very glad that she has conceded that principle in this Bill.

Lord Mendelsohn: My Lords, the Conservative manifesto introduced this issue, saying that a Conservative Government would legislate to cap redundancy compensation for public sector workers with a particular focus on larger amounts. I will make just a few comments about something that has received some consideration but falls slightly outside that, and it would be useful if the Minister could give some indication of whether the Government were thinking in some way about how to accommodate this. It relates to the nuclear decommissioning workers who entered into an agreement with their employer. To seek to undo that agreement through legislation is slightly unjust, and this is worth looking at.

The new legislation supersedes protections under previous legislation, including the statutory protections introduced under Schedule 8 to the Energy Act 2004, which currently safeguards workers' pensions, such as those of the Magnox workers. It has been estimated that about 1,200 Magnox workers who are decommissioning the UK's nuclear plants will be caught out by the proposed measures in the Bill, which could see them losing thousands of pounds in retirement income. The particular reason why these cases are worthy of note is of course that people took on those jobs knowing that it would change their retirement years because they were involved in a job which had an end date which was not the same as their full working life—these were expert workers who made the decision to do it because in compensation the balance of pension payments would in some way adequately reward their commitment to that work. The impact of the Bill could also be felt by many other workers, including the entire 30,000 who are working across the Nuclear Decommissioning Authority's estate, who will also be affected by a cap of £95,000.

As I understand from the presentation in the manifesto and at other times, the exit cap was to be seen as putting a stop to the so-called golden handshakes or fat-cat pension payouts in the public sector. But it will impact on many long-serving low-paid workers within the nuclear industry. That is why we hope that there will be some opportunity outside the Bill for the Government to look very carefully at the arrangements they have for those who do this difficult, dangerous and very important work and to give some due consideration to that, particularly because their provisions also relate to an agreement that was present in the Energy Act 2004.

4 pm

Baroness Neville-Rolfe: My Lords, I am grateful for the response and for the support for these amendments. Similar to the Scottish Government, the Welsh Government can now determine how they want to take forward arrangements in relation to devolved bodies and workforces. The devolved Administrations will be responsible for putting forward their own regulations and listing relevant bodies in scope. As I made clear in introducing the amendments, they will enable Welsh Ministers to make regulations in respect of exit payments where they have devolved legislative competence for exit payments under the Government of Wales Act 2006. Therefore, the situation is different from those issues, which we will no doubt come on to debate later this afternoon.

The noble Lord, Lord Mendelsohn, asked about the Nuclear Decommissioning Authority—a point that we have touched on before. Interestingly, as we discussed in relation to the previous amendment, the ONS is

involved. It determines whether a body falls within the public sector by reference to objective criteria, based on whether the governance, funding, ownership and function of these bodies demonstrate that they are controlled by government. Organisations within the Nuclear Decommissioning Authority carry out important public work, acting as agents of and under the direction of the NDA and operating only through a licence issued by the Office for Nuclear Regulation.

The majority of funding provided to the NDA comes from the Exchequer and amounts to about £2 billion a year. Regulations, not the Bill itself, will set out who is within the scope of the cap, and I can reassure the noble Lord that the Treasury will release both the guidance and regulations in the summer in order to consult with stakeholders. We expect the regulations to come before this House later this year and to be in force from October 2016 at the earliest. NDA employees due to exit before this date will not be affected. From the point when the regulations have been made, Ministers will be able to relax the cap and may wish to consider whether exceptionally it should be relaxed for certain individuals or even organisations.

To conclude, as I said earlier, the Bill supports the UK's position as the best place in Europe to start and grow a business. The amendments made in the other place make a series of changes to further support our aim, adding measures on apprenticeships, Sunday working, Wales, tidying up the pubs and on the Green Investment Bank, and making a number of technical changes. I thank all noble Lords who have spoken in the debates in this House and of course in the other place.

Lord Hain: I apologise to the Minister and my own Front Bench, but I cannot accept the distinction she is making between Bills here. The Minister is saying that the principle that devolved public services should be run by the Welsh Government is accepted by Her Majesty's Government in this House in respect of this Bill but not in respect of the Trade Union Bill. That gives rise to a major question which the Welsh Government will want to revisit.

Baroness Neville-Rolfe: I thank the noble Lord. My understanding is that the situation is different but we will no doubt have a debate later today—as I have already indicated. I do not think that we can spend further time in relation to this provision, which is clear cut and fully supported. I finish by thanking all those who worked tirelessly behind the scenes to facilitate the Bill's passage through this House, including the House's authorities, the Lord Speaker and the Bill team, who have worked so hard to get us to this place.

Motion on Amendments 33 to 39 agreed.

Motion on Amendments 40 to 54

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

That this House do agree with the Commons in their Amendments 40 to 54.

40: Clause 38, page 54, line 29, at end insert—

"( ) section (Sunday working), and Schedule (Sunday working hours: rights of shop workers) (Sunday working hours: rights of shop workers), for the purpose of enabling the exercise of any power to make regulations under any provision of the Employment Rights Act 1996 inserted by that Schedule;"

41: Clause 38, page 54, line 30, at end insert—

"( ) paragraph 2 of Schedule 2 (things to be included in Secretary of State's report in respect of the business impact target), and section 14 (which introduces Schedule 2) so far as relating to that paragraph;"

42: Clause 38, page 54, line 44, at end insert "(so far as not already in force under subsection (1))."

43: Clause 38, page 55, line 4, leave out subsection (4) and insert—

"(4) The following provisions of this Act come into force on such day as the Treasury may by regulations appoint—

(a) section 29 (UK Government Investments Limited);

(b) section 35 and Schedule 4 (restriction on public sector exit payments)."

44: Clause 38, page 55, line 6, leave out "The remaining" and insert "Subject to subsections (1) to (4), the"

45: Clause 39, page 55, line 15, leave out "and 15" and insert ", 15 and 18 to 21"

46: Clause 39, page 55, line 16, at end insert—

"( ) subsections (5) to (9) of section 14 (application of changes relating to the business impact target in relation to the relevant period in which they come into force);

( ) section (Apprenticeships: information sharing) (apprenticeships: information sharing);"

47: Clause 39, page 55, line 17, leave out "Part 5" and insert "sections 22 and 23"

48: Clause 39, page 55, line 25, leave out subsection (2)

49: Clause 39, page 55, line 28, at end insert—

"( ) Section (The Institute for Apprenticeships: transitional provision) extends to England and Wales."

50: Clause 39, page 55, line 29, at beginning insert "Subject to subsection (1),"

51: Clause 40, page 55, line 33, leave out subsection (2)

52: After Schedule 3, insert the following new Schedule—

"THE INSTITUTE FOR APPRENTICESHIPS

1 The Apprenticeships, Skills, Children and Learning Act 2009 is amended as follows.

2 In Part 1 (apprenticeships, study and training) before Chapter A1 insert—

"Chapter ZA1

THE INSTITUTE FOR APPRENTICESHIPS

Establishment

ZA1 The Institute for Apprenticeships

(1) A body corporate known as the Institute for Apprenticeships is established.

(2) In this Act that body is referred to as "the IfA".

(3) Schedule A1 makes further provision about the IfA.

General duties and functions

ZA2 General duties

(1) So far as relevant, and subject to any notice given by the Secretary of State under subsection (2), in performing its functions the IfA must have regard to—

(a) the reasonable requirements of industry, commerce, finance, the professions and other employers regarding education and training within the IfA's remit;

(b) the reasonable requirements of persons who may wish to undertake education and training within the IfA's remit;

(c) the need to ensure that education and training within the IfA's remit is of an appropriate quality;

(d) the need to ensure that education and training within the IfA's remit represents good value in relation to financial resources provided out of public funds;

(e) any information provided to it by any person designated by the Secretary of State for the purposes of this paragraph.

(2) The Secretary of State may give a notice in writing to the IfA setting out other matters to which the IfA must have regard when performing its functions.

(3) The Secretary of State may not give a notice under subsection (2) more than once in any financial year (within the meaning given by section ZA6(6)), except as provided by subsection (4).

(4) Where in a financial year—

(a) a notice is given under subsection (2), and

(b) after the giving of the notice a new Parliament meets for the first time,

the Secretary of State may give one further notice under subsection (2) in that year.

(5) The IfA must perform its functions efficiently and effectively.

(6) For the purposes of this section, education or training is within the IfA's remit if the education or training is or may be provided in the course of an approved English apprenticeship.

(7) Subsection (1) and any notice under subsection (2) do not apply in relation to functions that are—

(a) delegated by directions under section ZA4, or

(b) conferred by regulations under section ZA5,

unless the directions or regulations provide for them to apply in relation to the functions.

(8) Where directions or regulations so provide, the directions or regulations—

(a) may provide for any education or training to which the functions relate to be treated as within the IfA's remit for the purposes of this section;

(b) may provide for subsection (1) and any notice under subsection (2) to apply in relation to the functions with such modifications as the Secretary of State thinks fit.

(9) The Secretary of State must—

(a) publish in such manner as the Secretary of State thinks fit any notice under subsection (2), and

(b) lay a copy of it before Parliament.

ZA3 Provision of advice and assistance to the Secretary of State etc

(1) The IfA may, if requested to do so by the Secretary of State, provide the Secretary of State with advice and assistance in connection with the Secretary of State's functions relating to apprenticeships in relation to England.

(2) The Secretary of State's functions mentioned in subsection (1) include those under section 100(1A) or otherwise relating to the funding of apprenticeships in relation to England.

ZA4 Delegation of functions to the IfA by Secretary of State

(1) The Secretary of State may by direction delegate to the IfA any of the Secretary of State's functions relating to apprenticeships in relation to England.

(2) The functions may be delegated—

(a) to any extent that the Secretary of State specifies in the direction, and

(b) subject to any conditions that the Secretary of State specifies in the direction.

(3) The Secretary of State's functions mentioned in subsection (1) include those under section 100(1A) or otherwise relating to the funding of apprenticeships in relation to England.

ZA5 Conferral of further functions on the IfA by regulations

(1) The Secretary of State may by regulations confer on the IfA such functions relating to apprenticeships in relation to England as the Secretary of State considers appropriate.

(2) A function conferred by regulations under subsection (1) may involve the exercise of a discretion.

ZA6 Annual and other reports

(1) As soon as reasonably practicable after the end of each financial year, the IfA must prepare an annual report.

(2) An annual report is a report which includes—

(a) a description of what the IfA has done during the year, including a description of what the IfA has done as a result of any notice given by the Secretary of State under section ZA2(2),

(b) the statement of accounts prepared for that year under paragraph 11 of Schedule A1, and

(c) such other provision as the Secretary of State may direct.

(3) The IfA must send the report to the Secretary of State as soon as reasonably practicable after it has been prepared.

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

(5) The Secretary of State may direct the IfA to prepare, and send to the Secretary of State, as soon as reasonably practicable a report on any matter relating to its functions.

(6) In this section "financial year" means—

(a) the period beginning with the day on which this section comes into force and ending with the following 31 March, and

(b) each successive period of 12 months.

Compliance

ZA7 Secretary of State directions where the IfA fails to discharge duties etc

If the Secretary of State is satisfied that the IfA—

(a) has failed to discharge a duty imposed on it by or under this Act, or

(b) has acted or is proposing to act in an unreasonable way in exercising any function,

the Secretary of State may give the IfA such directions as the Secretary of State considers appropriate.

Directions

ZA8 General provision about directions under Chapters ZA1 and A1

(1) This section applies to a direction given to the IfA by the Secretary of State under this Chapter or Chapter A1.

(2) The IfA must comply with the direction.

(3) The direction must be in writing."

3 Before section A1 insert—

"Introductory"

4 In section A1 (meaning of "approved English apprenticeship"), in subsection (3)(a) for "the Secretary of State has published an approved apprenticeship standard under section A2" substitute "an approved apprenticeship standard has been published under section A2".

5 For section A2 (approved apprenticeship standards) substitute—

"Publication of standards and assessment plans

A2 Apprenticeship standards and assessment plans

(1) The IfA must publish—

(a) standards for such sectors of work as the IfA considers appropriate for the purposes of this Chapter, and

(b) assessment plans in respect of published standards.

(2) Each standard must—

(a) describe the sector of work to which it relates, and

(b) if there is more than one standard for the sector, describe the kind of work within the sector to which it relates.

(3) Each standard must set out the outcomes that persons seeking to complete an approved English apprenticeship are expected to attain in order to achieve the standard.

(4) An assessment plan in respect of a standard is a plan in accordance with which a person's attainment of the outcomes set out in the standard is to be assessed.

(5) Each assessment plan must—

(a) specify the standard to which it relates, and

(b) set out the proposed arrangements for evaluating the quality of any assessment provided for by the plan.

(6) The following provisions supplement the provision made by this section—

section A2A makes provision about the preparation of apprenticeship standards and assessment plans;

sections A2B to A2D make provision related to ensuring the quality of apprenticeship assessments;

sections A2E and A2F make provision about the review, revision and withdrawal of apprenticeship standards and assessment plans;

section A2G makes provision for independent examinations of apprenticeship standards and assessment plans;

section A2H makes provision about the maintenance of a published list of apprenticeship standards and assessment plans;

section A2I provides for the automatic transfer to the IfA of copyright in apprenticeship standards and assessment plans.

A2A Preparation of apprenticeship standards and assessment plans

(1) Each standard or assessment plan published under section A2 must have been prepared by a group of persons and approved by the IfA.

(2) The group of persons that prepared a standard or assessment plan published under section A2 must have been approved by the IfA for the purposes of this section.

(3) The IfA may provide advice or assistance to a group of persons in connection with the preparation of a standard or assessment plan.

(4) The IfA must publish—

(a) information about matters that it takes into account when deciding whether or not to approve standards or plans for the purposes of subsection (1);

(b) information about matters that it takes into account when deciding whether or not to approve groups of persons for the purposes of subsection (2).

(5) When making a decision of the kind mentioned in subsection (4)(a) or (b) in a particular case, the IfA may also take into account such other matters as it considers appropriate in the case in question.

(6) Information published under subsection (4) may be revised or replaced, and the IfA must publish under that subsection any revised or replacement information.

Quality assurance

A2B Evaluation of quality of apprenticeship assessments

(1) The IfA must secure that evaluations are carried out of the quality of apprenticeship assessments provided by persons in relation to assessment plans published under section A2.

(2) "Apprenticeship assessment" means the assessment of a person's attainment of the outcomes set out in the standard to which the assessment plan relates.

(3) For the purposes of subsection (1) the IfA may approve or make arrangements for other persons to carry out evaluations.

A2C Unsatisfactory apprenticeship assessments

(1) If the IfA considers that the quality of any apprenticeship assessment provided by a person is or may become unsatisfactory, it may carry out a review of the assessment, or make arrangements with another person for the carrying out of such a review.

(2) The IfA may, in consequence of a review, make arrangements for the purpose of improving the quality of the assessment to which the review relates.

(3) If the IfA—

(a) considers that the quality of any apprenticeship assessment provided by a person is or may become unsatisfactory, or

(b) that a person who provides an apprenticeship assessment has failed to co-operate with a review carried out under this section or with arrangements made under subsection (2),

it may report the matter to the Secretary of State or such other person as the IfA considers appropriate.

(4) A report under subsection (3) may contain recommendations as to the action to be taken by the person to whom the report is made.

(5) The IfA may publish a report under subsection (3).

A2D Committee to advise on quality evaluations etc

(1) The IfA may establish a committee with—

(a) the function of giving the IfA advice on the performance of its functions under sections A2B and A2C, and

(b) such other functions as may be conferred on the committee by the IfA.

(2) A majority of the members of the committee—

(a) must be persons who appear to the IfA to have experience of the assessment of education or training, and

(b) must not be members of the IfA.

(3) Subject to that, Schedule A1 applies to a committee established under this section as it applies to committees established under paragraph 7 of that Schedule.

Review, revision and withdrawal

A2E Regular reviews of published standards and assessment plans

(1) The IfA must maintain arrangements for the review at regular intervals of each standard or assessment plan published under this Chapter, with a view to determining whether the standard or plan ought to be revised or withdrawn.

(2) In respect of each standard or assessment plan published under this Chapter, the IfA must publish information about the intervals at which those reviews are to be conducted.

A2F Revision or withdrawal of published standards and assessment plans

(1) The IfA may—

(a) publish a revised version of a standard or assessment plan published under this Chapter, or

(b) withdraw a standard or assessment plan published under this Chapter (with or without publishing another in its place).

(2) Section A2A applies in relation to a revised version of a standard or plan published under this section as it applies in relation to a standard or plan published under section A2.

Other provisions about English approved apprenticeships

A2G Examinations by independent third parties

(1) Before the IfA approves a standard or assessment plan for the purposes of section A2A(1) it must make arrangements for the carrying out of an examination of the standard or plan by an independent third party.

(2) The duty imposed by subsection (1) does not apply in relation to a revised version of a standard or assessment plan, but the IfA may, for the purposes of a review under section A2E or at any other time, make arrangements for the carrying out of an examination of a standard or assessment plan by an independent third party.

(3) Where an examination of a standard or assessment plan is carried out under this section, the IfA must take account of the finding of the examination in exercising its functions in relation to the standard or plan under this Chapter.

(4) Nothing in subsection (1) prevents the IfA deciding to reject a standard or assessment plan without first making arrangements for the carrying out of an examination by an independent third party.

A2H List of published standards and assessment plans

(1) The IfA must maintain a list of the standards and assessment plans published by it under this Chapter.

(2) In respect of each standard and plan listed (including any revised version), the list must include details of when it comes into force.

(3) Where a revised version is listed, the list must include a general description of the cases to which the revised version applies.

(4) Where a standard or plan has been withdrawn, the list must include details of when the withdrawal comes into force and a general description of the cases to which it applies.

(5) The IfA must secure that the list is available free of charge at all reasonable times.

A2I Transfer of copyright in standards and assessment plans

(1) This section applies where—

(a) a standard or assessment plan is approved by the IfA under section A2A, and

(b) a person (other than the IfA) is entitled, immediately before the time the approval is given, to any right or interest in any copyright in the standard or plan.

(2) The right or interest is, by virtue of this section, transferred from that person to the IfA at the time the approval is given.

(3) The IfA must ensure that a standard or assessment plan in relation to which a right or interest has transferred by virtue of subsection (2) is made available to the public, subject to any conditions that the IfA considers appropriate."

6 (1) Section A3 (power to issue apprenticeship certificate) is amended as follows.

(2) In subsection (1) for "to" substitute "in respect of".

(3) In subsection (2), for paragraph (b) substitute—

"(b) the supply by the Secretary of State of apprenticeship certificates issued under that subsection, and copies of those certificates, to—

(i) persons in respect of whom they were issued;

(ii) persons for whom those persons work or have worked under approved English apprenticeship agreements to which the certificates relate."

7 In section 122 (sharing of information for education and training purposes)—

(a) in subsection (3) (persons who may provide and receive information), after paragraph (f) insert—

"(g) the IfA.";

(b) in subsection (5) (functions for the purposes of which information may be provided)—

(i) omit the "or" at the end of paragraph (b), and

(ii) after paragraph (b) insert—

"(ba) any function of the IfA, or".

8 In section 262(6) (orders and regulations subject to affirmative procedure) before paragraph (ab) insert—

"(aab) regulations under section ZA5;"

9 Before Schedule 1 insert—

"SCHEDULE A1

THE INSTITUTE FOR APPRENTICESHIPS

Status

1 The IfA is to perform its functions on behalf of the Crown.

Membership

2 (1) The IfA is to consist of—

(a) a member appointed by the Secretary of State to chair the IfA ("the chair");

(b) the chief executive appointed in accordance with paragraph 5;

(c) at least 4 and no more than 10 other members appointed by the Secretary of State.

(2) The chair and members appointed under sub-paragraph (1)(c) are referred to in this Schedule as the "non-executive members".

Tenure of non-executive members

3 (1) The non-executive members hold and vacate office in accordance with the terms of their appointment.

(2) Those terms are to be determined by the Secretary of State, subject to the following provisions of this Schedule.

(3) A non-executive member must not be appointed for a term of more than five years.

(4) A non-executive member may resign from office at any time by giving written notice to the Secretary of State.

(5) The Secretary of State may remove a non-executive member from office on either of the following grounds—

(a) inability or unfitness to carry out the duties of office;

(b) absence from the IfA's meetings for a continuous period of more than 6 months without the IfA's permission.

(6) The previous appointment of a person as a non-executive member does not affect the person's eligibility for re-appointment.

Remuneration of non-executive members

4 (1) The IfA must, if the Secretary of State requires it to do so, pay remuneration, allowances and expenses to its non-executive members.

(2) The IfA must, if the Secretary of State requires it to do so, pay, or make provision for the payment of, a pension, allowances or gratuities to or in respect of a person who is or has been a non-executive member.

(3) If a person ceases to be a non-executive member of the IfA and the Secretary of State decides that the person should be compensated because of special circumstances, the IfA must pay compensation to the person.

(4) The amount of a payment under sub-paragraph (1), (2) or (3) is to be determined by the Secretary of State.

(5) Service as a non-executive member is one of the kinds of service to which a scheme under section 1 of the Superannuation Act 1972 (superannuation schemes as respects civil servants etc) can apply (see Schedule 1 to that Act).

(6) The IfA must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to the provision of pensions, allowances or gratuities under section 1 of the Superannuation Act 1972 payable to or in respect of non-executive members in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Chief executive and other staff

5 (1) The first chief executive is to be appointed by the Secretary of State on conditions of service determined by the Secretary of State, after consulting the chair.

(2) Subsequent chief executives are to be appointed by the IfA after consulting the Secretary of State.

(3) The chief executive must not be appointed for a term of more than five years.

(4) The previous appointment of a person as chief executive does not affect the person's eligibility for re-appointment.

(5) The chief executive holds that office as a member of staff of the IfA.

(6) The IfA may appoint other members of staff.

(7) Service as a member of staff of the IfA is employment in the civil service of the State.

(8) The following are to be determined by the IfA with the approval of the Secretary of State—

(a) the number of members of staff of the IfA (in addition to the chief executive);

(b) the conditions of service of staff of the IfA.

(9) Sub-paragraph (8)(b) is subject to sub-paragraph (1).

Arrangements with Secretary of State

6 The Secretary of State and the IfA may enter into arrangements with each other for the provision to the IfA by the Secretary of State, on such terms as may be agreed, of staff, accommodation or services.

Committees

7 (1) The IfA may establish committees, and any committee established by the IfA may establish sub-committees.

(2) The IfA may—

(a) dissolve a sub-committee established under sub-paragraph (1), or

(b) alter the purposes for which such a sub-committee is established.

(3) In this Schedule a committee or sub-committee established under sub-paragraph (1) is referred to as an "IfA committee".

(4) An IfA committee must include at least two persons who are members of the IfA or its staff.

(5) The IfA may, with the approval of the Secretary of State, arrange for the payment of remuneration, allowances and expenses to any person who—

(a) is a member of an IfA committee, but

(b) is not a member of the IfA or its staff.

(6) The IfA must, if directed to do so by the Secretary of State, review—

(a) the structure of IfA committees, and

(b) the scope of the activities of each IfA committee.

Procedure

8 (1) The IfA may regulate—

(a) its own proceedings (including quorum), and

(b) the procedure (including quorum) of IfA committees.

(2) The validity of proceedings of the IfA, or of an IfA committee, is not affected by—

(a) a vacancy;

(b) a defective appointment.

Exercise of functions

9 (1) Subject to sub-paragraphs (2) and (3), the IfA may authorise any of the following to exercise functions on its behalf—

(a) a member of the IfA;

(b) a member of the IfA's staff;

(c) an IfA committee;

(d) any other person.

(2) The IfA may not authorise any of the functions under sections A2, A2A and A2E to A2I to be exercised on its behalf—

(a) under sub-paragraph (1)(c), by a committee a majority of the members of which are not members of the IfA's staff, or

(b) under sub-paragraph (1)(d).

(3) The IfA may authorise the exercise on its behalf of functions that have been—

(a) delegated to the IfA by directions under section ZA4, or

(b) conferred on the IfA by regulations under section ZA5,

only if and to the extent that the directions or regulations so provide.

Supplementary powers

10 (1) The IfA may—

(a) provide information or advice to any person in connection with any of the IfA's functions;

(b) co-operate or work jointly with any person where it is appropriate to do so for the efficient and effective performance of any of the IfA's functions;

(c) carry out research for the purposes of, or in connection with, the IfA's functions;

(d) do anything else that the IfA considers necessary or appropriate for the purposes of, or in connection with, its functions.

(2) The power in sub-paragraph (1)(d) is subject to any restrictions imposed by or under any provision of any Act.

(3) The IfA may not borrow money.

(4) The IfA may not, without the consent of the Secretary of State—

(a) lend money,

(b) form, participate in forming or invest in a company, or

(c) form, participate in forming or otherwise become a member of a charitable incorporated organisation (within the meaning of section 69A of the Charities Act 1993).

(5) In sub-paragraph (4) the reference to investing in a company includes a reference to becoming a member of the company and to investing in it by the acquisition of any assets, securities or rights or otherwise.

Accounts and reports

11 (1) The IfA must—

(a) keep proper accounts and proper records in relation to its accounts, and

(b) prepare in respect of each financial year a statement of accounts.

(2) Each statement of accounts must comply with any directions given by the Secretary of State as to—

(a) the information to be contained in it,

(b) the manner in which such information is to be presented, or

(c) the methods and principles according to which the statement is to be prepared.

(3) The IfA must send a copy of each statement of accounts to—

(a) the Secretary of State, and

(b) the Comptroller and Auditor General,

before the end of the month of August following the financial year to which the statement relates.

(4) The Comptroller and Auditor General must—

(a) examine, certify and report on each statement of accounts, and

(b) send a copy of each report and certified statement to the Secretary of State.

(5) The Secretary of State must lay before Parliament—

(a) a copy of each statement sent to the Secretary of State under sub-paragraph (3), and

(b) a copy of each report and certified statement sent to the Secretary of State under sub-paragraph (4).

(6) "Financial year" has the meaning given by section ZA6(6) (annual and other reports).

Application of seal and proof of documents

12 (1) The application of the IfA's seal must be authenticated by the signature of—

(a) the chief executive, or

(b) a member of the IfA who has been authorised by the IfA for that purpose (whether generally or specifically).

(2) A document purporting to be duly executed under the IfA's seal, or signed on its behalf—

(a) is to be received in evidence, and

(b) is to be treated as executed or signed in that way, unless the contrary is proved.

Funding

13 (1) The Secretary of State may make grants to the IfA, or provide the IfA with any other kind of financial assistance, subject to any conditions that the Secretary of State considers appropriate.

(2) The conditions may, in particular—

(a) enable the Secretary of State to require full or partial repayment of sums paid by the Secretary of State if any of the conditions are not complied with;

(b) require the payment of interest in respect of any period during which a sum due to the Secretary of State in accordance with any of the conditions remains unpaid."

10 In Schedule 1 to the Superannuation Act 1972, in the list of "Offices", at the appropriate place insert—

"Non-executive member of the Institute for Apprenticeships."

11 In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities) at the appropriate place insert—

"The Institute for Apprenticeships."

53: After Schedule 3, insert the following new Schedule—

"SUNDAY OPENING HOURS: RIGHTS OF SHOP WORKERS

Employment Rights Act 1996

1 The Employment Rights Act 1996 is amended as follows.

2 In section 41 (opted-out shop workers and betting workers), for subsection (3) substitute—

"(3) In this Act "notice period", in relation to an opted-out shop worker or an opted-out betting worker, means—

(a) in the case of an opted-out shop worker who does shop work in or about a large shop, the period of one month beginning with the day on which the opting-out notice concerned was given;

(b) in any other case, the period of three months beginning with that day.

This subsection is subject to sections 41D(2) and 42(2)."

3 After section 41 insert—

"41A Notice of objection by shop workers to working additional hours on Sunday

(1) A shop worker may at any time give to his or her employer a written notice, signed and dated by the shop worker, to the effect that he or she objects to doing shop work for additional hours on Sunday.

(2) In this Part—

"additional hours" means any number of hours of shop work that a shop worker is (or could be) required to work under a contract of employment on Sunday that are (or would be) in excess of the shop worker's normal Sunday working hours;

"objection notice" means a notice given under subsection (1).

(3) The "normal Sunday working hours" of a shop worker are to be calculated in accordance with regulations.

(4) Regulations under this section may provide—

(a) for the calculation to be determined (for example) by reference to the average number of hours that the shop worker has worked on Sundays during a period specified or described in the regulations;

(b) for a calculation of the kind mentioned in paragraph (a) to be varied in special cases;

(c) for the right to give an objection notice not to be exercisable in special cases (and subsection (1) is subject to provision made by virtue of this paragraph).

(5) Provision under subsection (4)(b) or (c) may, in particular, include provision—

(a) about how the calculation of normal Sunday working hours is to be made in the case of a shop worker who has not been employed for a sufficient period of time to enable a calculation to be made as otherwise provided for in the regulations;

(b) for the right to give an objection notice not to be exercisable by such a shop worker until he or she has completed a period of employment specified or described in the regulations.

(6) But regulations under this section may not include provision preventing a shop worker who has been continuously employed under a contract of employment for a period of one year or more from giving to the employer an objection notice.

(7) Regulations under this section may make different provision for different purposes.

41B Explanatory statement: persons who become shop workers

(1) This section applies where a person becomes a shop worker who, under a contract of employment, is or may be required to do shop work on Sundays.

(2) The employer must give to the shop worker a written statement informing the shop worker of the following rights—

(a) the right to object to working on Sundays by giving the employer an opting-out notice (if section 40 applies to the shop worker);

(b) the right to object to doing shop work for additional hours on Sundays by giving the employer an objection notice.

(3) The statement must be given before the end of the period of two months beginning with the day on which the person becomes a shop worker as mentioned in subsection (1).

(4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).

(5) A statement under this section must comply with such requirements as to form and content as regulations may provide.

(6) Regulations under this section may make different provision for different purposes.

41C Explanatory statement: shop workers at commencement date

(1) This section applies where—

(a) under a contract of employment a shop worker is or may be required to do shop work on Sundays, and

(b) the shop worker was employed under that contract on the day before the commencement date.

(2) The shop worker's employer must give to the shop worker a written statement informing the shop worker of the rights mentioned in section 41B(2).

(3) The statement must be given before the end of the period of two months beginning with the commencement date.

(4) An employer does not fail to comply with subsections (2) and (3) in a case where, before the end of the period referred to in subsection (3), the shop worker has given to the employer an opting-out notice (and that notice has not been withdrawn).

(5) A statement under this section must comply with such requirements as to form and content as regulations may provide.

(6) Regulations under this section may make different provision for different purposes.

(7) In this section "commencement date" means the date appointed by regulations under section 38 of the Enterprise Act 2016 for the coming into force of section (Sunday working) of, and Schedule (Sunday opening hours: rights of shop workers) to, that Act.

41D Failure to give explanatory statement under section 41B or 41C

(1) This section applies if an employer fails to give to a shop worker a written statement in accordance with—

(a) section 41B(2) and (3), or

(b) section 41C(2) and (3).

(2) If the shop worker gives to the employer an opting-out notice, the notice period under section 41(3) that applies in relation to the shop worker is varied as follows—

(a) if the notice period under that provision would have been one month, it becomes 7 days instead;

(b) if the notice period under that provision would have been three months, it becomes one month instead.

(3) If the shop worker gives to the employer an objection notice, the relevant period under section 43ZA(2) that applies in relation to the shop worker is varied as follows—

(a) if the relevant period under that provision would have been one month, it becomes 7 days instead;

(b) if the relevant period under that provision would have been three months, it becomes one month instead."

4 (1) Section 42 (explanatory statement) is amended as follows.

(2) In the heading, after "statement" insert ": betting workers".

(3) In subsection (1) omit "shop worker or".

(4) In subsection (2)—

(a) in paragraph (a) omit "shop worker or";

(b) in paragraph (b)—

(i) after "the" omit "shop worker or";

(ii) omit "an opted-out shop worker or";

(c) in the words after paragraph (b), omit "shop worker or."

(5) In subsection (3) omit "shop worker or".

(6) Omit subsection (4).

(7) In subsection (6)—

(a) for "forms" substitute "form";

(b) for "subsections (4) and (5)" substitute "subsection (5)".

5 In the heading of section 43, after "work" insert ": opting-out notices".

6 After section 43 (in Part 4) insert—

"43ZA Contractual requirements relating to working additional hours on Sundays: objection notices

(1) Where a shop worker gives to his or her employer an objection notice, any agreement entered into between the shop worker and the employer becomes unenforceable to the extent that—

(a) it requires the shop worker to do shop work for additional hours on Sunday after the end of the relevant period, or

(b) it requires the employer to provide the shop worker with shop work for additional hours on Sunday after the end of that period.

(2) The "relevant period" is—

(a) in the case of a shop worker who is or may be required to do shop work in or about a large shop, the period of one month beginning with the day on which the objection notice is given;

(b) in any other case, the period of three months beginning with that day.

This subsection is subject to section 41D(3).

(3) A shop worker who has given an objection notice may revoke the notice by giving a further written notice to the employer.

(4) Where—

(a) a shop worker gives to the employer a notice under subsection (3), and

(b) after giving the notice the shop worker expressly agrees with the employer to do shop work for additional hours on Sunday (whether on Sundays generally or on a particular Sunday),

the contract of employment between the shop worker and the employer is to be taken to be varied to the extent necessary to give effect to the terms of the agreement.

(5) The reference in subsection (1) to any agreement—

(a) includes the contract of employment under which the shop worker is employed immediately before giving the objection notice;

(b) includes an agreement of a kind mentioned in subsection (4), or a contract of employment as taken to be varied under that subsection, only if an objection notice is given in relation to the working of additional hours under that agreement or contract as varied.

43ZB Interpretation

(1) In this Part—

"additional hours" has the meaning given in section 41A(2);

"large shop" means a shop which has a relevant floor area exceeding 280 square metres;

"objection notice" has the meaning given in section 41A(2);

"regulations" means regulations made by the Secretary of State.

(2) In the definition of "large shop" in subsection (1)—

(a) "shop" means any premises where there is carried on a trade or business consisting wholly or mainly of the sale of goods;

(b) "relevant floor area" means the internal floor area of so much of the large shop in question as consists of or is comprised in a building.

(3) For the purposes of subsection (2), any part of the shop which is not used for the serving of customers in connection with the sale or display of goods is to be disregarded.

(4) The references in subsections (2) and (3) to the sale of goods does not include—

(a) the sale of meals, refreshments or alcohol (within the meaning of the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005 (asp 16)) for consumption on the premises on which they are sold, or

(b) the sale of meals or refreshments prepared to order for immediate consumption off those premises."

7 After section 45 insert—

"45ZA Sunday working for shop workers: additional hours

(1) Subsection (2) applies where a shop worker has given an objection notice to his or her employer and the notice has not been withdrawn.

(2) The shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the employer done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on Sunday or on a particular Sunday.

(3) Subsection (2) does not apply to anything done on the ground that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.

(4) A shop worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer on the ground that the shop worker gave (or proposed to give) an objection notice to the employer.

(5) Subsections (2) and (4) do not apply where the detriment in question amounts to dismissal (within the meaning of Part 10).

(6) For the purposes of this section, a shop worker who does not do shop work for additional hours on Sunday or on a particular Sunday is not to be regarded as having been subjected to any detriment by—

(a) a failure to pay remuneration in respect of doing shop work for additional hours on Sunday which the shop worker has not done, or

(b) a failure to provide any other benefit where the failure results from the application (in relation to a Sunday on which the shop worker has not done shop work for additional hours) of a contractual term under which the extent of the benefit varies according to the number of hours worked by, or the remuneration paid to, the shop worker.

(7) Subsections (8) and (9) apply where—

(a) an employer offers to pay a sum specified in the offer to a shop worker if he or she agrees to do shop work for additional hours on Sunday or on a particular Sunday, and

(b) the shop worker—

(i) has given an objection notice to the employer that has not been withdrawn, or

(ii) is not obliged under a contract of employment to do shop work for additional hours on Sunday.

(8) A shop worker to whom the offer is not made is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure—

(a) to make the offer to the shop worker, or

(b) to pay the shop worker the sum specified in the offer.

(9) A shop worker who does not accept the offer is not to be regarded for the purposes of this section as having been subjected to any detriment by any failure to pay the shop worker the sum specified in the offer.

(10) In this section—

"additional hours" and "objection notice" have the meanings given by section 41A(2);

"relevant period" means the period determined by section 43ZA(2) (but subject to section 41D(3))."

8 In section 48 (complaints to employment tribunals), after subsection (1) insert—

"(1YA) A shop worker may present a complaint to an employment tribunal that he or she has been subjected to a detriment in contravention of section 45ZA."

9 After section 101 insert—

"101ZA Shop workers who refuse to work additional hours on Sunday

(1) Subsection (2) applies where a shop worker has given an objection notice that has not been withdrawn and he or she is dismissed.

(2) The shop worker is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or the principal reason) for the dismissal is that he or she refused, or proposed to refuse, to do shop work for additional hours on Sunday or on a particular Sunday.

(3) Subsection (2) does not apply where the reason (or principal reason) for the dismissal is that the shop worker refused (or proposed to refuse) to do shop work for additional hours on any Sunday or Sundays falling before the end of the relevant period.

(4) A shop worker who is dismissed is to be regarded for the purposes of this Part as unfairly dismissed if the reason (or principal reason) for the dismissal is that the worker gave (or proposed to give) an objection notice to the employer.

(5) In this section—

"additional hours" and "objection notice" have the meanings given by section 41A(2);

"relevant period" means the period determined by section 43ZA(2) (but subject to section 41D(3))."

10 In section 108 (qualifying period of employment), in subsection (3) after paragraph (d) insert—

"(da) subsection (2) of section 101ZA applies (read with subsection (3) of that section) or subsection (4) of that section applies,".

11 In section 236 (orders and regulations), in subsection (3) after "27B," insert "41A that include provision under subsection (4)(c) of that section,".

Employment Act 2002

12 In section 38 of the Employment Act 2002 (failure to give statement of employment particulars etc)—

(a) in subsection (2)(b), after "change)" insert "or under section 41B or 41C of that Act (duty to give a written statement in relation to rights not to work on Sunday)";

(b) in subsection (3)(b), after "1996" insert "or under section 41B or 41C of that Act"."

54: In the Title, line 1, at end insert "provision about Sunday working;"

Motion on Amendments 40 to 54 agreed.

Trade Union Bill

Report (2nd Day)

Relevant document: 1st Report from the Joint Committee on Human Rights

4.07 pm

Moved by ***Lord Bridges of Headley***

That the Bill be now considered further on Report.

The Parliamentary Secretary, Cabinet Office (Lord Bridges of Headley) (Con): My Lords, if the House will give me leave, I wish to clarify the Government's position on the first policy—check-off—that the House will consider this afternoon. I have been a Member of your Lordships' House for a little under a year. One of the many lessons I have learned is that when Ministers stand at this Dispatch Box and face cannons to the right of them, cannons to the left of them, cannons in front of them—and maybe even behind them—it is usually best to pause and to ask the reason why. Uncomfortable though this may be, it is nothing like as uncomfortable as charging on.

I have met, as has my noble friend, a number of your Lordships to discuss the clause on check-off, and I think it only fair to say that many of your Lordships do not support the Government's contention that the measure we are debating will modernise the relationship between a trade union member and his or her trade union. I fear that my trying to convince your Lordships of our case this afternoon may simply add grist to the mill of those who see this measure as a means of undermining the trade unions themselves. That is certainly not—and never has been—the Government's intention. Trade unions play a crucial role in companies, organisations and communities across the country. Furthermore, arguments have been made with considerable vim and vigour that by ending check-off and moving to direct debit those on low pay—especially those who have payday loans—might have to cease being trade union members, or have to pay extra bank charges. Again, that is not our intention, and never has been.

To show that the Government mean this and to avoid further acrimony on this issue, the Government will support the principles behind the amendment from the noble Lord, Lord Balfe. Amendment 21 would allow check-off to remain where there is an agreement with the employer to provide check-off. It sets out how the administration of this will be paid for and allows that employees can pay by another means should they wish. This amendment ticks three boxes: cost, which will be borne by the unions, not taxpayers; consistency across all sectors; and control, as individuals would be able to choose how to pay their union. However, the Government have one misgiving. We genuinely understand the noble Lord's wish to ensure that only the specific costs required to administer check-off are charged to the trade union. I want to ensure that we would not expect to see undue costs applied at financial detriment to the trade union.

However, the Government do not feel it appropriate for this role to be undertaken by the Certification Officer—we will debate that role in due course—and we have therefore accepted the principle of allowing check-off to continue where the union meets the costs. I therefore ask my noble friend Lord Balfe not to press his amendment and to allow the Government to bring back an amendment at Third Reading for consideration by this House.

I would like briefly to touch upon one other aspect of Clause 14—its scope. We have produced a clear list of bodies, taking as our starting point the Freedom of Information Act, and we will share this list as part of draft regulations prior to the Third Reading of the Bill in this House.

As to organisations which may be in scope in the future, legitimate concerns have been raised about this clause, and Clause 12 relating to facility time, applying to organisations only partly funded by public funds. To address this, I shall not move Amendment 21A but will bring back an amendment at Third Reading that would allow only those bodies mainly—I emphasise "mainly"—funded by public funds to be added to the provisions of this Bill, and that would be via the affirmative process. This will apply to both Clause 12 and Clause 14.

Finally, the noble Baroness, Lady Hayter, raised an important concern regarding the impact of the clause's scope on charities, and the Government share her concern. Where organisations are what the general public would consider to be charities—such as Oxfam or others doing valuable charitable work funded by the public purse—it is not our intention to include them within the scope of the Bill. I am working closely with officials and with the noble Baroness to find a way in which such charities can be assured that they will not be included.

Before I sit down, I thank the noble Lord, Lord Mendelsohn, and the noble Baroness, Lady Hayter, as well as my noble friend Lord Balfe, for their good-spirited engagement on this issue, and I hope that we have found a resting place on which we can agree.

Motion agreed.

Clause 14: Prohibition on deduction of union subscriptions from wages in public sector

Amendment 21

Moved by ***Lord Balfe***

21: Clause 14, page 11, line 15, at end insert "unless there exists an agreement between the employer and a trade union which provides for—

(a) the remittance by the employer to the trade union of those deductions;

(b) the making of a payment by the trade union to the employer in respect of that remittance; and

(c) the option for a worker to pay their subscriptions by other means.

(1A) Costs charged to a trade union under subsection (1) must be judged to be reasonable by the Certification Officer."

Lord Balfe (Con): My Lords, I was delighted to tear up the speech that I was going to make, and I am delighted to begin by thanking the noble Lord for his statement. What we have seen in the last few weeks is this House at its best. I remember that when I was introduced here I had a briefing from a very wise lady on our side, although I will not say who. She said, "Richard, the difference between this place and the other place is that here you have to win arguments in order to win votes". The Minister alluded to the fact that possibly the Government did not feel that they had won this argument and I fully agree with him.

I should like to mention a couple of facts. In this country we have a very odd view of the unions. They are not comprised of people who go to work every day looking for a strike; basically they have come out of the Victorian benefit societies and are some of the best examples of working-class solidarity. However, as time has progressed—particularly in the last 20 or 30 years—they have also attained a very heavy top layer of professional workers. Many people are quite surprised when I remind them that the British Medical Association is a trade union. There are many other trade unions whose members are highly paid professional workers, but at the same time there are many trade unions whose members are very low-paid workers, and those are the people who would have been hurt by this clause.

Perhaps I may just mention some figures, and I am largely using those from UNISON, although obviously other unions are affected by this provision. If you join UNISON, you not only get industrial cover, which generally does not matter because people do not go on strike, but you also get—and this matters—death and accident benefits, and legal advice, which is often very good in helping to resolve industrial disputes. We must all have met a person who has said, "I'm not putting up with this. I'm going to take them to an industrial tribunal". Then the union representative will quietly say, "Look, calm down a bit. You haven't quite got a case, but we can give you some good legal advice and help you deal with the problems you've got".

4.15 pm

There is another reason why this was seen as inopportune. UNISON has supplied me with a list of 30 different kinds of deductions that are made from the wages of workers. I will go through just the main 10: charitable donations; additional voluntary contributions to a pension; bicycle loans—a government scheme, incidentally; childcare vouchers—another government scheme; credit union payments, which are quite common; in some jobs, uniform and equipment purchase; healthcare schemes—it is surprising how many unions deduct money from wages for private healthcare, and not just for Bupa but the many other smaller private healthcare firms, often originating in the trade union movement; car parking; and, finally, the thing that is deducted from wages that many people would love to see banned, student loans—that is the way that the Government get their money back. There are plenty of things deducted from wages.

I will mention the case of UNISON. It is a union of low-paid workers. The monthly average subscription is £1.43 a week, and the average worker earns £15,000 a year. That is the average; in other words, most people earn less than that. This union deduction is crucial to their well-being. As such, I am delighted to hear what the Minister has said. I think that possibly, as the debate has developed, these facts have come more to the fore. As I said, the union movement is a very wide one and it is very easy to see some parts of it and think, "Oh well, they can do a direct debit—it is not hard for a doctor to have a direct debit". But when you look across the whole waterfront, you see that this is a very important part of it. As such, at the appropriate moment, I will be delighted to withdraw my amendment. But for now, I beg to move.

Lord Kerslake (CB): My Lords, I rise to speak to this amendment and in doing so declare my interests as chairman of King's College Hospital and president of the Local Government Association. I am very grateful to the noble Lord, Lord Balfe, for moving this amendment. He has been a constant companion during the Committee stage of the Bill and I have learned a great deal of trade union history from him that I did not previously know about.

Like the noble Lord, Lord Balfe, I am in the equally happy position of finding that the speech I wrote over the weekend is now entirely redundant. I think we are all agreed about the importance of the role of trade unions in this country. They are a part of British life.

[LORD KERSLAKE]
It was clear to anyone who looked at the detail that the Government's proposals on check-off stood to do considerable damage both to the unions themselves and to their members and potential members. Like the noble Lord, Lord Balfe, I was particularly concerned about the impact on low-paid, mostly female workers who stood to lose out on the protection and benefits of trade union membership.

It is worth bearing in mind that the impact of this proposal was likely to be felt by more than 21,000 public sector organisations. Given its impact, I think many noble Lords felt that the arguments in favour of it were—to put it mildly—not convincing. Take just one example: modernisation. Again, as the noble Lord, Lord Balfe, has said, there are many examples of payroll deductions continuing. It appears that only the trade unions and their members were going to be route marched to modernity on this issue. It was absolutely right that the members should have the choice between payroll deduction and direct debit. In a situation where the unions had signalled clearly that they were willing to pay the costs, it felt to me that the last credible argument on this issue had fallen away.

I am delighted that Ministers have listened on this issue and changed their view. I hope that we can see equal progress on some of the other contentious issues in the Bill, and I look forward to seeing the wording at Third Reading.

Lord Cormack (Con): My Lords, mine is the third name on this amendment and I am delighted to intervene. I am also delighted that I did not write a speech at the weekend. I am extremely grateful to my noble friend the Minister for what he said and for the way in which the Government have engaged in constructive dialogue and listened to the voice of the House.

The words that I have used constantly in my contributions to this debate in Committee and earlier on Report have been "choice" and "fairness". Had we kept the Bill as it was, those principles, which are fundamental to one-nation Toryism, would have been violated. I am extremely glad that I can pay tribute to an institution of state—the trade unions—that I have always admired, which have a vital, constructive and continuing role to play in our society and in our economy. It would have been a great mistake for this House and this Parliament, in the wake of a general election and promises and pledges genuinely made, if we had we violated the principles of choice and fairness.

Personally, I have some doubt about the need for this Bill at all, but at least now we are on the way to having a Bill that is unexceptionable and can be accepted in all parts of the House. As my noble friend Lord Balfe said, it is an example of your Lordships' House at its best. My noble friend talked about cannon to the right of him, cannon to the left and cannon in front. A noble Lord interjected that there were also cannon behind him. Well, as one of the cannon behind him I am very glad to pay him and my noble friend Lady Neville-Rolfe an unstinted expression of admiration for the way in which they have listened and reacted. I hope that before the Bill has gone on to the statute book we will have seen the amendments that we passed at an earlier stage accepted in another place and going through on the nod in this House. I hope that we will then have diffused all the potentially damaging aspects of the Bill. Let us hope that is how it ends.

Lord Deben (Con): I can get extremely angry about some things in this House. One thing I get angry about is when the obvious does not seem to be obvious quickly enough, so it is a great pleasure to say to my noble friend that this did become obvious quickly enough. That is very good.

However, I hope that we will not use this word "modernise" too often. I cannot understand why it is a more modern system to give money to the banks for a direct debit than to have it so much more conveniently done on the check-off system. There is nothing non-modern about the check-off system and I never understood why that argument was used. The crucial issue about all this is to enter into the lives and ways of living of the people who are affected by the legislation that we pass. I do not think that I could let this go by without pointing out that it was this House, with all the criticisms that are made of it, that more readily and clearly saw what the effect of this would be. Not only should Ministers take considerable comfort and credit for the changes that they have made, this House ought to take credit for the fact that this is what we are best at—saying, "I am not thinking about the politics or the arguments. I am just thinking about how this affects the people who will be involved in this particular Act".

Earlier today I had to say to one of my noble friends, rather toughly, that I am unhappy about some of the supposed restrictions on how people should use government grants. The reason for that is that I try to enter into people's minds, and I am not at all sure that I understand how you make the sort of distinctions which the Government are seeking to make. I could not understand why people could not use this system rather than another and I am thrilled that the Government have taken that on board. They have done so very generously and I pay considerable credit to them and to my noble friend Lord Balfe; throughout these debates he has shown understanding and clarity, and we are all indebted to him.

Baroness Burt of Solihull (LD): My Lords, I welcome the words of the noble Lord, Lord Bridges. Like the noble Lord, Lord Kerslake, my speech is redundant, which is really good news, and I fully associate myself with his remarks.

The Government should not have brought this provision forward at all and I fear that it reflects the tribal nature of the historical relationship between the two main parties. Such tribalism is not edifying or appropriate today where we see the best relationships between employers and trade unions in partnerships that promote productivity, prosperity and peace. So I would like to say well done to the noble Baroness, Lady Neville-Rolfe; it cannot have been easy to achieve what she has pulled off.

Lord Dykes (Non-Afl): My Lords, I add my comments in support of what has been said. I had a feeling that the noble Baroness, Lady Neville-Rolfe, the noble

Lord, Lord Bridges of Headley, and the other Ministers associated with this Bill would be in listening mode, bearing in mind the contents of the debates hitherto.

My shock and dismay at the original text of this Bill was enormous and I think that was shared by people in all parts of the House. The Bill did not look properly constructed nor did it utilise non-extreme ideology to deal with any modernisation necessities for trade unions—some of which one doubts. In January I received a very interesting briefing from the FDA, an association of professional managers and others, which is not in any way known for extremism. In relation to the reference of the noble Lord, Lord Balfe, to trade union members dreaming about causing industrial action as they go to work in the morning, the FDA says:

"Much of the portrayed justification for change relates to an utterly refutable assumption that trade unions call for industrial action on a regular basis and without cause. FDA members only embark on industrial action as a last resort. As a union with an almost 100 year history we have held national industrial action only once, yet it is a fundamental right for all working people to have the option to take industrial action and we strongly oppose moves to deny workers this right".

In a way the same rights intrinsically belong to check-off and I sincerely ask Ministers to be in listening mode for other parts of this Bill, so that it can be improved if they insist on it carrying on—people have quite rightly indicated that there is probably no need for this Bill but since the Government are perhaps psychologically committed to seeing it progress I ask that they do that. In the mean time, my sense of shock has diminished. I did not write a speech over the weekend because I thought there might be some progress and I warmly thank the Ministers for their reaction today.

Lord Tyler (LD): My Lords, at the risk of contributing to this lordly love-in, I want to refer to an additional reason why I very much welcome the statement made by the noble Lord, Lord Bridges, about the opportunity to think again between now and Third Reading. Clause 14 relies hugely on secondary legislation—on regulations—including new subsection (3), which would have been the subject of government Amendment 21A. As we all too often recognise in this House, the devil is in the detail, and that is particularly so in this Bill.

4.30 pm

I draw the Minister's attention and that of the noble Baroness to the letter she sent to the Delegated Powers and Regulatory Reform Committee, on which I serve, on 2 February, in which she said:

"I will also be making draft regulations available during the passage of the Bill".

To my knowledge—I may have missed it—we certainly do not have a comprehensive list of the draft regulations. I very much hope that between now and Third Reading we may see those draft regulations in fulfilment of that promise.

While I am on this point, I note also that the Minister just referred to Clause 12, which raises a similar issue, which he said he would address between now and Third Reading. Clause 12, as he and the noble Baroness will recall, caused some controversy in Committee in your Lordships' House and raises similar issues, to which the Minister referred in his original contribution this afternoon. In Clauses 12 and 14 there is a variation of process between the affirmative and negative procedures. Even if it is not possible this afternoon, I hope the Minister or his noble friend will explain to the House why there is variation between the two clauses, which would otherwise seem very similar. As noble Lords will recognise, this matter is extremely important to the House because it gives us that wider opportunity, when the time comes, to challenge, question and debate the exact nature of the regulations.

The Bill, like many in the current Session, is seen as one for which regulations are unduly important. They have been, to some extent, skeletal Bills. Therefore, I hope the Minister will be able to indicate this afternoon that between now and Third Reading we will see those draft regulations. In the mean time, if he cannot explain the difference in process between Clauses 12 and 14, perhaps he could make a note that we will need that explanation at Third Reading.

Baroness Wheeler (Lab): My Lords, we, too, welcome the Government's announcement today on check-off. I understand that the Minister also has some issues to report to the House on further developments on facility time. I look forward to that.

On check-off, the Government heeded warnings from across the House on the arbitrary and unfair nature of their original proposals and the dire consequences that would have resulted across the NHS, local authorities, schools and universities from a blanket ban on check-off in the public sector. I also thank Ministers for the recent constructive and conciliatory spirit of the discussions with us on today's Report stage issues and on the facility time cap. For all the last-minute, going-to-the-wire nature of those discussions, and bearing in mind that the amendment in its original form was tabled in the Commons as long ago as November, the movement to the current position is welcome.

As the Minister would expect, we look forward to receiving the revised amendments from the Government on both check-off and facility time to be tabled at Third Reading. We of course reserve our position subject to satisfying ourselves that the revised text meets the terms of the proposed changes. My noble friend Lord Collins will respond on issues relating to the Certification Officer's role and power under that group of amendments.

I should like to believe that, as a result of our detailed deliberations in this House, particularly on check-off, the Government's change of heart represents one small step towards Ministers having a better understanding and appreciation of how the current check-off system works and is valued by employers, trade unions and trade union members as part of a modern industrial relations framework in today's public services. If it also heralds a better appreciation in the future of the importance of trade union members having the same choice as staff in the voluntary and private sectors in the light of their work, personal circumstances and financial situation, so much the better. The overwhelming consensus in all sections of this House is that public sector employers should be

[Baroness Wheeler]
able to continue to make local decisions on operating check-off in the light of local needs and priorities, with trade unions meeting the administrative costs. We knew even before Committee that the unions had already agreed to do this.

Perhaps most of all, it is good to see that listening mode, which the Government have said they are in during the course of the Bill, has finally led to significant movement, rather than on just a few measures that, although welcome, have not so far—until now—impacted on the core of the Bill.

There are a couple of other issues. On Amendment 21A we also welcome the clarification from the Minister on the scope of Clauses 12 to 14 of the Bill. We were deeply concerned that private or voluntary sector service companies, such as charities and residential care homes, providing outsourced public services, could fall under the scope of the Bill. The clarification that these clauses apply only to companies performing a function of a public nature and mainly funded from public funds addresses this concern, and we welcome the Minister's announcement that he is going to withdraw Amendment 28 and come back with a revised wording.

The Minister also knows, however, having mentioned this, that we retain some questions about the application of the requirement to charities that receive funding from public services. We hope that this can all be clarified at Third Reading, as we judge that the Government do not want to meddle with the good management of independent charities. We trust that agreement can be reached: otherwise, we may need to revisit the issue.

Noble Lords will also recall, shortly before the Committee consideration of Clause 14, the so-called skeleton regulations that were published by the Government on the scope of the Bill. This was obviously a hastily cobbled together, out-of-date document that did not represent the Government's finest legislative hour. Ministers subsequently admitted that they found it hard to define which bodies were going to be covered, given that many of the organisations contained in the skeleton had long been either culled or merged. Can the Minister confirm that these skeletons are now well and truly buried and that the Government do not intend to resurrect them in connection with any part of the Bill?

Check-off is trusted by trade union members. It helps them manage their finances. As noble Lords have stressed, thousands of low-paid members across the public sector who need the choice to opt for check-off will be greatly relieved that it is to continue and that they will not stand to lose their eligibility for workplace representation and key trade union benefits such as those detailed so fully in Committee by the noble Lord, Lord Balfe, including professional indemnity insurance and legal representation for accidents at work and on employment issues. Just as important is that public sector employers will now be able to continue to operate check-off and enter into new voluntary check-off agreements with trade unions in the light of their local needs and priorities.

We on these Benches are most grateful for the support that has been received from across the House on these crucial issues and we look forward to making positive progress at Third Reading.

Lord Bridges of Headley: My Lords, I apologise to those who have had to edit their speeches so quickly and spent time over the weekend to no avail. In response to the points on charities made by the noble Baroness, I completely agree, and we will seek to address this point. As regards the point made by the noble Lord, Lord Dykes, about further consultation and what the noble Baroness, Lady Wheeler, said about facility time, she is right. We have made further progress on the reserve power to cap facility time.

Obviously, we are not discussing Clause 12 today, but I will update noble Lords on where we are. Our commitment is to engage the cap only on the basis of evidence from the transparency measure. Our proposal is that the power will not be exercised at all before there are at least two years of data from the bodies subject to the reporting requirement. Following this, should a particular employer's facility time be significantly above the levels of those of comparable organisations, the Minister will send and publish a letter to the employer drawing attention to the concerns. The employer will have the opportunity to set out the reasons for the level of facility time. The employer will always have a year to make progress in relation to their facility time levels. Nothing would be done until a third set of reporting data was published. If there is insufficient progress, the Minister will then be at liberty to exercise the reserve power and make regulations to cap facility time for that employer or those employers. Our intention is to set out the key elements of the arrangements for triggering a cap in Clause 13 when we introduce it.

As regards the point made by the noble Lord, Lord Tyler, on delegated powers, I absolutely hear what the noble Lord is saying. The substance of regulations will be available before Third Reading. I very much hope, therefore, that the skeletons will be well and truly buried. On that point, I would like to thank your Lordships for the comments that were made this afternoon.

Lord Balfe: This has been a very pleasant little debate. The noble Lord, Lord Kerslake, reminded me that I did not declare my interests, which are to be found in the register. I thank all the people who have contributed to the debate, in particular my noble friend Lord Cormack. When I was first appointed by the Prime Minister as the Conservative Party envoy to the trade union movement, I was met with much suspicion within the party. My noble friend was one of the first people to welcome me and point out the work that he has done over many years with unions, including with USDAW and on Sunday trading and other things. I appreciate the support that I have had from him and from many other noble Lords.

I also appreciate the support and briefings that I have had from UNISON, Prospect and the TUC. Several million low-paid workers depend on check-off. UNISON has more than 7,000 agreements in the public sector and a further two-and-a-bit thousand in the private sector. This is not a very small thing but a major part of low-paid workers' security. I am pleased that we have secured this. I thank the Minister—he is not only a noble Lord but a noble Minister today—for this and I am happy to withdraw the amendment.

Amendment 21 withdrawn.

Amendments 21A and 22 not moved.

Amendment 23 had been withdrawn from the Marshalled List.

Schedule 1: Certification Officer: investigatory powers: Schedule to be inserted into the 1992 Act

Amendment 23A

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

23A: Schedule 1, page 19, line 45, leave out from "If" to "that" in line 46 and insert "the Certification Officer has reasonable grounds to suspect"

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, there has been a lot of very helpful and constructive discussion with noble Lords opposite and on the government Benches. We have made a lot of progress on the Bill this week, as the noble Baroness, Lady Wheeler, said so truthfully. I thank in particular my noble friend Lord Bridges for his pivotal role and for setting out some of the changes that we propose to make that reflect that dialogue. We will come on to discuss others.

I turn to why the Government are strengthening the Certification Officer. The Government have a manifesto commitment to reform the role of the Certification Officer and there is a public interest in properly regulated trade unions. This group of amendments includes government and other amendments, so I shall start by addressing the government amendments. Once the noble Lord, Lord Collins, has spoken to his amendments and others have added their views to the debate I shall respond on the whole group.

Much was made in Committee about the Bill giving the Certification Officer the same powers to investigate for all breaches that he currently has for financial matters and will shortly have for the register of members. This would enable him to act without having a complaint from a member, including on matters that he might discover in the course of his duties. It would also enable him to respond to matters brought to his attention—I suppose I should say to her attention for the future—by third parties, although he is not bound to consider these. This is a wholly reasonable power for a regulator.

We have heard concerns that the Certification Officer may receive vexatious complaints and that this could increase his workload and costs. I want to provide reassurance here. The Certification Officer, as a public authority, is required to act reasonably. We would not expect him or her to spend much time looking into representations from third parties that are groundless or vexatious. The Certification Officer cannot appoint an inspector to investigate a union on a whim. He can make inquiries, but can appoint an inspector only where there are circumstances suggesting that a union has not complied with its duties.

4.45 pm

The inspector will usually be a member of his own staff, or may be an external inspector. I recognise that there are concerns about the enhanced investigatory powers and the appointment of inspectors. That is why government Amendment 23A provides for a higher threshold for the appointment of inspectors in relation to the investigatory powers proposed in the Bill. The Certification Officer will be able to appoint an inspector only where he or she has reasonable grounds to suspect that a union has failed to comply with a duty. This is on top of two safeguards already in the Bill. He or she will be able to request documents only where there is good reason to do so and will be required to give a union the opportunity to make representations before taking any enforcement action.

The noble Lord, Lord Mendelsohn, raised concerns in Committee about the right of appeal to the Employment Appeal Tribunal in relation to the European Convention of Human Rights. I believe that I can address these important concerns. Government Amendment 31E provides for appeals against the Certification Officer's decision on points of fact as well as the appeal on points of law. This will provide greater judicial oversight of the Certification Officer's decisions. Unions will have a greater right of appeal to an independent tribunal and this will meet the concerns expressed by the Equality and Human Rights Commission.

Finally, technical Amendments 31B, 31C and 31D will ensure that there is flexibility to charge a different amount of levy from federated trade unions as distinct from trade unions. This mirrors the approach in the Bill regarding federated employer associations and employer associations.

Baroness Donaghy (Lab): My Lords, I believe that the Government have got it wrong on the proposals for a new role for the Certification Officer. The Government are creating legislation affecting our legal rights in inverse proportion to the need for it. Thousands of people are deprived of access to justice because of the Government's cuts to legal aid and slamming costs on to employment tribunal applications, yet here we have no complaints, no build-up of steam, no demand whatever and the Government decide that something is up. They create a complex and expensive role for the new-look Certification Officer when there is no evidence that it is necessary.

This is supposed to be a deregulating Government; however, they are setting up this bureaucratic role for the Certification Officer and making the trade unions pay for it. This will politicise the role, and there is still much confusion of roles. Will the CO be judge, jury or executioner? How will the Government clarify this to avoid judicial review? The sheer amount of information that trade unions will be asked to give is disproportionate and will tie up resources which should be used to protect members.

The cost to the trade unions is unreasonable. If, as the Government say, there is a need to ratchet up the role, then it should be paid for from the public purse. I believe firmly that the Certification Officer should be able to initiate investigations only when a union member has made a complaint. Failing this, there must be

[Baroness Donaghy]
additional safeguards to protect members' right to privacy and the right of trade unions to organise their internal democratic affairs without unjustified interference.

The Government are putting out mixed signals to justify the proposed ban on check-off, which we thought we were facing today, on the basis that employers should not be involved in what should be a direct relationship between unions and their members. In contrast, in the same Bill employers are invited to play a direct and active role in influencing enforcement action taken by the CO on key democratic decisions within unions.

The new role could damage employment relations—for instance, if an employer attempts to interfere in the election of a general secretary, or in challenging proposed strike action, and union members will be less likely to trust the Certification Officer to handle complaints fairly. It is important that the new Certification Officer should be required to consult interested parties, including the TUC and unions, on future enforcement strategies. That would be consistent with good practice and transparency. It might even be advisable to require the CO to establish consultative committees for trade unions and employers' associations. Their views would be sought before issuing guidance or setting enforcement strategies. Where the CO disagrees with the views of the consultative committee or committees, he should be required to provide a written response explaining and justifying the difference of opinion. This might seem to be too much detail but this is a quasi-judicial post and proposed changes should have been much more carefully thought through than this.

We have seen a succession of these Bills which, as the noble Lord, Lord Tyler, said, have a skeletal element. I argue they are so naked that even the Windmill Theatre would have been embarrassed. I understand that the Select Committee, under the excellent chairmanship of the noble Lord, Lord Burns, was very impressed by the current Certification Officer, David Cockburn. He embodies all that is good about public service. The fact that there was no headline news does not mean that a problem was buried; it means that the role was performed in an exemplary manner. We should thank him for all he has done, not impose this Eton mess of a package.

Lord Oates (LD): My Lords, I welcome the Government's recognition that, as drafted, the Bill could give rise to vexatious complaints which the Certification Officer would be required to investigate. Government Amendment 23A will give greater discretion to the Certification Officer so that he or she needs to investigate only where they have reasonable grounds to suspect a breach. I hope this will not be the only concession today with regard to the Certification Officer because, notwithstanding the concessions the Minister has set out, the Bill's clauses and schedules relating to the Certification Officer remain obnoxious. They represent an unwarranted interference in the activities of free trade unions and make trade unions pay for the privilege of having this unnecessary regulation.

It is surprising, to say the least, that a Government who purport to champion deregulation are so ready to reverse their position when it comes to trade unions. What happened to the Government's one-in, one-out rule on regulations, which I think later became the one-in, two-out rule? I hope the Minister will tell us which regulations are being removed from trade unions to meet that commitment. However, I doubt that will happen because we have asked the Minister repeatedly for an answer to that question throughout the passage of this Bill. I hope I am wrong, but I suspect that I will get no answer again today, not through any fault of the Minister but for the simple reason that there is none.

Not content with imposing yet more regulation on trade unions, the Government have also determined that the trade unions must pay for it. The imposition of the levy is just one regrettable clause in a highly regrettable and unnecessary Bill. However, it is a particularly symbolic one as it demonstrates the Government's lack of awareness of the role of trade unions. As the noble Lord, Lord Balfe, rightly pointed out, trade unions are not composed of people who go to work every day plotting revolution, but rather of people who come together to protect their rights in the workforce and ensure proper representation. However, the Government do not seem to see it that way.

We have repeatedly asked the Minister to explain which comparable organisations are subject to a levy to pay for this sort of regulation by the state. The examples which we were given at earlier stages in the progress of the Bill, such as the Financial Conduct Authority, are just not comparable. The FCA regulates profit-making organisations, many of which pose systemic risks to our economy, many of which have routinely flouted the spirit—and sometimes the letter—of the law, and some of which have been bailed out by taxpayers to the tune of billions of pounds. By contrast, trade unions are representative, democratic organisations, already tightly regulated by law, which play a critical role in our democracy.

However, the Government do not seem to see trade unions in that light. They do not see them as contributors to our democracy or as defenders of the rights of people with less power than themselves; they see them simply as opponents of their party's interest and as organisations to be regulated, levied and constrained. There is no other explanation for the decision to impose a levy in this way. No such levy exists for the only really comparable organisation, which is the Electoral Commission. The Conservative Party does not fund investigations by the Electoral Commission into the manner in which it operates, but the trade unions must pay for the partisan regulation that the Conservatives impose on them. It is unjustifiable.

Amendment 31A, which the noble Lord, Lord Collins, will speak to, would at least help ameliorate the impact of the levy. It would prevent a partisan direction being given by the Secretary of State to the Certification Officer and ensure that the officer would only have to investigate complaints made by non-trade unionists if they could demonstrate that they had suffered detriment. That seems to be a very sensible change to Schedule 2. Together, those changes would help ensure that the Certification Officer, who has operated effectively as a regulator to date, is not turned into an overbearing regulator subject to political direction. I very much

hope that, in her response, the Minister will be able to address the points made in that amendment and give some more concessions on the Bill.

Lord Collins of Highbury (Lab): My Lords, I, too, thank the Minister for introducing her amendments at this stage. They are critical, in the light of some of our debates in Committee. I repeat what my noble friend Lady Donaghy said: where is the evidence for the requirement for this change of role? I repeat what I said in Committee: the Certification Officer has played a vital role in securing and ensuring that the rights of trade union members are upheld in their union. As the noble Lord, Lord Bridges, said, it is—or should be—about the rights of those individual members. The sad fact is that the proposals in the Bill in relation to the powers of the Certification Officer are changing that role from a quasi-judicial officer who adjudicates on disputes between unions and their members to a full enforcement agency, with wide-ranging powers to intervene in the internal, democratic decisions of trade unions. This would not be at the behest of individual members but, possibly, at the behest of employers and other campaign groups, even though no union member has complained. This completely changes the role of the Certification Officer.

We have repeatedly spoken about evidence. This brings me to another point, about the sanctions or fines which the Government intend to allow the Certification Officer to impose. In my 35 years of dealing with the Certification Officer, and having read every single annual report over the past 35 years, I have not seen one case where the Certification Office has given an order that has not been complied with. Of course, that related to union rules, but what we are now seeing is this role moving into industrial relations, because it will deal with industrial action. It is moving into membership registers and the details of membership information, which, again, could be subject to complaints from others rather than just simply members querying their own records.

5 pm

In Committee, many noble Lords, including the noble Lord, Lord Pannick—and I am pleased to see him in his place—raised this issue in the context of freedom of association and the very clear impact that it might have on our ability to meet the test of the European Convention on Human Rights. While many noble Lords will support other elements of the Bill in relation to, perhaps, the industrial action ballots—and there might be reasons for the Government saying that there needs to be a legitimate mandate on a particular industrial action ballot—what the Government are doing here is fundamentally intervening in the right of the freedom of association. For me, the real test of any democratic society is that right of freedom of association. You can have many democratic constitutions that are not upheld and are challenged by free organisations, and that test could be failed in this context because we are appearing to say that the state has the right to say how a union agrees its constitution and determines its democratic structure. It will be tested at regular intervals by complaints other than those of the individual members, so it will not be upholding the rights of the individual member of a union.

The Equality and Human Rights Commission has warned that the Certification Officer's ability to instigate complaints as far as investigating and adjudicating them compromises the impartiality. I welcome the Government's amendment to allow for appeals on all decisions of the Certification Officer to the EAT. I welcome that very much: it addresses not only our concerns, but those of the Equality and Human Rights Commission. I am pleased with that, but as my noble friend Lady Donaghy has said, this is actually imposing even greater regulation and greater costs—because all of these things will impose a cost—and it will certainly increase the involvement of the law and lawyers in the role and running of trade unions. With the greatest respect to noble and learned Lords, and the noble Lord, Lord Pannick, I do not think that it is a good idea that lawyers interfere with the democratic organisation of working people. It is for them to determine their own structures.

That comes back to the point made by my noble friend: the role of the Certification Officer is being changed from upholding the rights of trade union members. It is being changed and politicised. It becomes political because the Certification Officer will be responsible for implementing some of the policies of the Government. The evidence—and this has been mentioned by my noble friend and other noble Lords—of the current Certification Officer to the Select Committee was incredibly important on this. Even though the Government have now tabled an amendment regarding the trigger for investigations, which I welcome, his greatest fear was that if he cannot establish that he has properly considered a complaint, any complainant—it would not be a member of the union but, possibly, an employer—may seek judicial review. I hope that the Minister can assure us that her amendment will mitigate adequately against that risk, which the existing Certification Officer identified, about whether he considers investigating a complaint.

This turning of the Certification Officer into a more political role leads to the issues that I have raised in my amendment today. As noble Lords have raised it in the debate, I hope that the Minister can give full reassurance on this. It is about the independence of the Certification Officer and the way that the Certification Officer is appointed. I know that some of these issues cannot be addressed in the Bill. However, I hope that she will make explicit some of the assurances that she has given me and my colleagues—my noble friends on the Bill team—about how that appointment will meet proper public appointments processes and how the independence of the CO can be guaranteed, particularly from Governments determining what they do or do not like when it comes to industrial relations. As I have said, the "reasonable grounds" process which the Minister has put into government Amendment 23A will address some of those concerns, but I would like her to give those assurances, including on the appeal to the EAT.

I want to come on to costs, which have been raised in the debate, because there is a tendency somehow to separate them. We have heard noble Lords talk about tax. In fact, in an earlier debate we heard that charities should not expend money that comes from the taxpayer on campaigning, yet this Government see union money as somehow not linked to those union contributions

[Lord Collins of Highbury]
made by millions of ordinary working people. Those union contributions, which we have talked about, are made by low-paid workers paying £1 a week. Even the so-called impact assessment that was published said that the additional costs of this extension to the Certification Officer's powers—at a time when we are trying to cut the cost of regulation and the state—will be an increase of £1.9 million a year. I hope that the Minister can assure me on some of these issues because she needs to understand that that cost will come out of the pockets of ordinary working people who are contributing £1 or £2 a week. It is not some big corporation that is making a profit doing this or some monopoly that has been given the power to make money at the expense of the consumer; it is ordinary working people.

I want the Minister to give some clear assurances about the power to impose the levy: about how trade unions will be properly consulted on it, and how its costs are to be properly measured and limited. I would like her to do so particularly as it relates to the cost of investigation, because these new powers result in powers to appoint internal investigators. I hope that she can give us some assurance about where those costs for those external investigators will come from.

We have made huge progress on this issue, but I regret that the Government are continuing to push, particularly with the imposition of penalties. Over the past 35 years, there is no evidence of the need for them. There has not been a single occasion when the Certification Officer has made an order that has not been complied with. I am sorry to bang on for so long on this issue, but it is about fundamental rights of association and of freedom of association and about concern about the state interfering in the free organisation of trade unions in this country. I look forward to hearing the Minister's response.

Lord Cormack: My Lords, I shall not bang on, but I want to make one or two points. The noble Lord, Lord Collins of Highbury, has made a very powerful case. The noble Baroness, Lady Neville-Rolfe, and my noble friend Lord Bridges have shown that they are in listening and receptive mood, for which we are all genuinely grateful. I say to the Minister who is about to reply to this debate that when she is prescribing or proscribing it is very important that we have a flexible structure in which we can have widespread confidence, that is not overcostly and that it cannot have levelled at it the charge of overregulation. From what I have heard and seen, there is a danger that the suggested amendments to the role of the Certification Officer are moving too far in the direction of proscription, prescription and overregulation. I hope that my noble friend will indicate that she would be happy to have detailed conversations between now and Third Reading with the noble Lord, Lord Collins of Highbury, and others who have a lifetime of experience in these fields so that we can get a mechanism that is acceptable and adaptable as circumstances change.

Baroness Neville-Rolfe: I thank noble Lords. This has been an important follow-up to a series of debates and meetings outside the Chamber that we have had—to reply to my noble friend Lord Cormack—on the important issue of the Certification Officer and the linked issues, because the Certification Officer runs like a rainbow through the Bill. I also recognise that most trade unions work within the regulatory framework most of the time. We are a deregulatory Government—noble Lords know that, and I am unapologetic about it—but let me be clear: some trade unions break the law. Our reforms provide the Certification Officer with the right tools to ensure effective regulation. Equally, they ensure proportionate regulation, which is an important point given the concerns raised about bureaucracy by the noble Baroness, Lady Donaghy, the noble Lord, Lord Oates, and my noble friend Lord Cormack.

Let me give an example: the case of Mr Dooley v the Union of Construction, Allied Trades and Technicians—UCATT. I am sure the noble Lord, Lord Collins, will know the case. The Certification Officer determined that the union had breached its statutory duty to ballot all its eligible members during the 2009 general secretary election. He also observed other issues relating to the union's membership register, but he was unable to investigate further as no complaint had been received. This seems to be the wrong situation, and it is that sort of situation we are seeking to change, but we have also listened, as I promised we would when we started Committee stage in this House.

We agree that the Certification Officer, like any other regulator, is and should be independent. However, it is fair to say that noble Lords are seeking a greater assurance. I therefore intend to bring forward at Third Reading an amendment to confirm the Certification Officer's freedom from ministerial direction. I also confirm that the Certification Officer will follow OCPA appointment procedures.

The noble Baroness, Lady Donaghy, suggested that the Certification Officer might consult on his enforcement strategy. Clearly, he needs to have the ability and space to respond to the information that he receives and to decide the right way forward. He is of course independent, and it is an independent matter whether he investigates and what his approach is to an investigation. That is really a matter for him.

5.15 pm

I turn to human rights. Subsection (3)(c) of the new section in Amendment 31A is about compliance with the requirements of the European Convention on Human Rights. The Certification Officer, as a public authority, is already required to act in a way that is compatible with the European convention. We do not need to legislate to require someone to comply with the law, and I am happy to say that again today. However, we listened carefully, as I promised we would, particularly to concerns that appeals on a point of law were not sufficient reassurance. That is why the Government have tabled Amendment 31E, which I have already discussed, allowing appeals on points of fact as well as on points of law. I am grateful to the noble Lord, Lord Collins, for his comments. As he said, this seems to meet the outstanding concerns.

Subsections (3) to (5) of the amendment concern the Certification Officer's powers to regulate. The Certification Officer has important statutory duties,

which are approved by Parliament. However, the current system relies on union members bringing complaints to him—for example, about the conduct of elections. Complaints in relation to other statutory duties are made less often, but that does not mean that there is no problem. Union members may simply be unaware that they can complain, and that is why we need a responsive and diligent regulator. As I have said, he needs to be able to respond proactively if he becomes aware of a breach. This is in line with regulators in other areas.

Now and in future, the Certification Officer must consider the union member's complaint and make a decision, but the Certification Officer will not be bound to consider representations from third parties. Instead, he will be free to decide what inquiries to make and whether to launch an investigation. I understand the desire for further reassurance that the Certification Officer is not sidetracked into spurious and resource-intensive activity, with costs passed on to the unions via the levy. That is why government Amendment 23A increases the threshold for the appointment of inspectors to circumstances where there are reasonable grounds to suspect that a union has failed to comply with the duty. This provides a sensible additional control on the actions of the Certification Officer, while not unduly restricting his powers to investigate.

The noble Lord, Lord Collins, asked whether, if the Certification Officer does not investigate a complaint, he can be judicially reviewed. Of course the answer has to be potentially yes, because judicial review applies in these kinds of areas of law. However, provided that the Certification Officer has acted reasonably in deciding not to investigate, there is no reason why his decision should be successfully challenged. Deciding whether or not to investigate a potential issue is the sort of assessment that regulators make all the time.

That brings me on to subsections (6) to (8) of the new section in the amendment, which propose that regulations for the levy should provide for a review by an independent panel. The noble Baroness, Lady Donaghy, has raised concerns about costs, as have the noble Lord, Lord Oates, and my noble friend Lord Cormack. I understand the concern about how activities of the changed Certification Officer might result in costs for the unions. To demonstrate that my value-for-money and deregulatory heart is in the right place, I am ready to propose an alternative solution. This is not a matter for Third Reading because it concerns the way in which we exercise the power to make regulations on the levy, but I want to explain some of our thinking on that because I believe it will help to reassure noble Lords.

Specifically, we intend that the levy will recover only part of the costs for the Certification Officer. It is an important feature of Clause 18 that there must be consultation with organisations such as the TUC and ACAS before we make the regulations. This consultation will include detail about which expenses will be funded from the levy and which will be borne by the taxpayer. However, given the concerns that have been raised by a number of noble Lords, we will specifically propose excluding from recovery by the levy the cost of external inspectors. That would mean that trade unions would not bear the full costs of their regulation at all, and specifically they would not bear the most variable element of the Certification Officer's costs. This addresses concern about the cost to unions from the potential for third parties being vexatious. It changes the incentive structure and brings in the power of the Treasury to ensure that public money is handled in an effective way that achieves value for money.

The Bill also provides for regulations to set the minimum and maximum penalties according to the size of the organisation and the type of breach. I can say today that we will consult unions and relevant stakeholders on these proposals before making a final decision about how the power will be exercised.

There are now numerous safeguards around the Certification Officer. I will come back at Third Reading to ensure that the Certification Officer is free from ministerial direction. I have made a number of changes, which represent an improvement and which will make things better, and I invite the noble Lord not to move Amendment 31A.

Amendment 23A agreed.

Amendments 24 to 31 had been withdrawn from the Marshalled List.

Schedule 2: Certification Officer: exercise of powers without application etc

Amendment 31A not moved.

Clause 18: Power to impose levy

Amendments 31B to 31D

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

31B: Clause 18, page 15, leave out line 26 and insert—

"( ) a federated trade union,

( ) a trade union that is not a federated trade union,"

31C: Clause 18, page 15, leave out line 32 and insert—

"( ) functions in relation to federated trade unions,

( ) functions in relation to trade unions that are not federated trade unions,"

31D: Clause 18, page 16, line 6, at end insert—

""federated trade union" has the same meaning as in section 118;"

Amendments 31B to 31D agreed.

Amendment 31E

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

31E: After Clause 18, insert the following new Clause—

"Rights of appeal not limited to questions of law

In each of the following provisions of the 1992 Act, for "on any question of law arising" substitute "on any question arising"—

(a) section 45D (appeal from Certification Officer on question arising in proceedings etc under section 24B, 24C, 25, 31, 32ZC or 45C);

(b) section 56A (appeal from Certification Officer on question arising in proceedings etc under section 55);

(c) section 95 (appeal from Certification Officer on question arising in proceedings etc under Chapter 6 of Part 1);

(d) section 104 (appeal from Certification Officer on question arising in proceedings etc under section 103);

(e) section 108C (appeals from Certification Officer on question arising in proceedings etc under Chapter 7A of Part 1)."

Amendment 31E agreed.

Amendment 31F

Moved by ***Baroness Prosser***

31F: After Clause 18, insert the following new Clause—

"Codes of Practice: employee engagement

In section 203 of the 1992 Act (issue of Codes of Practice by the Secretary of State), after subsection (1) insert—

"(1A) The Codes of Practice issued by the Secretary of State for the purpose of promoting the improvement of industrial relations must encourage all employers, in both the private and public sectors, to have due regard to the establishment of mechanisms via trade unions that encourage and enable effective employee engagement in industrial relations.""

Baroness Prosser (Lab): My Lords, the Minister will have noticed the slight but significant change of wording in this amendment. Despite my cogent and—I thought—very persuasive argument when I moved my amendment in Committee, I clearly failed to move the Government Front Bench. The Government's argument was that currently there are a variety of ways in which employers can and do engage with the workforce. Quite so—there is no disagreement between us on that. The noble Earl, Lord Courtown, said:

"It is not right that we restrict how employee engagement can happen".—[*Official Report*, 25/2/16; col. 462.]

Nothing in my previous amendment nor in this amendment would or could restrict ways in which employee engagement can take place. Indeed, the thinking behind the amendment is to encourage involvement, participation and voice, and for a thousand flowers to bloom. The amendment asks that employers are encouraged,

"to have due regard to … mechanisms"—

in other words, to establish systems which suit themselves and the workforce.

Back in 2009, David MacLeod and Nita Clarke, director of the Involvement and Participation Association, in which I declare an interest as a member of the board, produced a report for the then Secretary of State for Business, Innovation and Skills entitled *Engaging for Success*. A number of subsequent events took place. In March 2011, the Prime Minister, David Cameron, gave his backing to the newly established independent employee engagement task force during its launch at No. 10 Downing Street. In November 2012, 43 CEOs, from a wide range of organisations, signed a letter inviting UK businesses to embed employee engagement in the ways in which they work and quantified the loss to the UK from low levels of employee engagement.

Later that month, 300 practitioners gathered in the Queen Elizabeth II Conference Centre. In May 2013 the job design and engagement White Paper was published and in May 2014 the well-being and engagement White Paper was published. By August 2015 more than 600,000 visits had been made to the EFS website—around 27,000 a month—and 1.4 million hits had been made on the EFS pages. There has been lots of interest and lots of activity. Then just last month a White Paper on further evidence was published showing, via new sector case studies, the links between employee engagement and business performance.

When I spoke in Committee I mentioned the report produced by the IPA entitled *Involvement and Productivity—The Missing Piece of the Puzzle?*. I remind your Lordships' House that the report examined the evidence from large surveys, behavioural experiments, academic studies and employers themselves and went on to show that, when employees have a voice in the decision-making process over their jobs and the wider organisation, productivity is higher.

We have a lot of government activity and support, right up to the level of Prime Minister. We have a large, wide-ranging and supportive group of employers involved and a report demonstrating the link between employee engagement and improved productivity. What's not to like? The amendment calls on the Government to reiterate their support and to give this initiative—which they are on record as being supportive of—a formal boost.

Lord Stoneham of Droxford (LD): My Lords, when I spoke in Committee I made reference to the Minister behaving like Stonewall Jackson. I was concerned in making that analogy because I pointed out to the Committee that he was eventually shot by his own side. I was mightily relieved today that, when all the cannons were turned on the Minister, the Government made a number of sensible suggestions in the interests of her welfare.

As we come to this debate, we can relax a little and look at how industrial relations affect industry and employment in this country. I hope that we can spend a moment away from the adversarial side of industrial relations and look at the more positive aspects. It is not that I do not respect the need for collective bargaining but I see the benefits of employee participation and working with trade unions as important elements of our democracy. It is sad that in industry generally we have often relied far too much on overseas companies and foreign management to bring in new techniques for our managers and employees and benefit from. There are some notable examples, particularly John Lewis and Marks & Spencer, but I have to say that in these days when customer service, quality and value-added products and services are so important all these aspects of employment require direct employee engagement.

I am reminded of my own experience in the 1970s in a WEA class of shop stewards from the Morris Cowley plant who I had to teach the economics of the car industry. It was not an easy task at that time, particularly as they were cynically suspicious of me and I was warning them of the coming threat to them and their jobs from Japan, which had reached America

and was about to become very dominant in Europe. The Morris Marina was the car those employees made at the time and I remember using the words of Gerald Ratner to describe their product.

At that point, there was uproar in the class. The people who made the rear door panels and the electrics and those who worked in the paint shop came to an amazing defence of their product. I was quite astonished. They took real pride in their product and in what they did in that plant, despite its huge complexities and difficulties at that time. Throughout the rest of my career, I have always thought what an opportunity was missed by British management in the British motor industry at that time by failing to engage with its staff. It was only when we had the foreign management of Nissan, Jaguar Land Rover, Toyota and Honda that we started to make real progress in those sectors.

5.30 pm

The lesson I learned from that is that it is a two-sided equation. Not only do you need modernised trade unions but you need very good management skills and stable industrial relations arrangements. You also need not only a commitment from unions on wages and benefits but a commitment to the companies that the employees work in. From that comes an interest in job opportunities, skills training, promotion and engagement.

This is a very important issue. This Government are failing on productivity, as did the last Government. They should take the excellent suggestion from the noble Baroness, Lady Prosser, and engage in this matter. I was amazed when she mentioned that so many papers were published by the previous Government. I do not even remember them and certainly cannot remember reading any of them. That is a sadness and an indictment that we have not taken this issue seriously.

Therefore, I welcome this debate and I hope that the Government will take up the noble Baroness's suggestion—if not by accepting the amendment then by their deeds and practices in the future.

Lord Mendelsohn (Lab): My Lords, I congratulate my noble friend Lady Prosser on tabling this amendment and on the very elegant adjustment to the amendment, which I think addresses some of the Government's concerns. In keeping with the approach of the noble Lord, Lord Bridges, and the noble Earl, Lord Courtown, I hope that on this they will be even more in listening mode and that we might be able to make some changes on this. However, we are very grateful for what they have done thus far today.

The amendment raises an issue that I have been particularly exercised about during the passage of the Bill. I am not, and never have been, a trade unionist and I have never been a member of a trade union. I am a businessman and have been involved in business for most of my life when I have not been involved in politics. One area of the Bill that has always concerned me is that there has been a complete lack of appreciation of the significance of the function and role of management. These things are tremendously important, and the amendment provides an important message that I hope the Government will be able to find ways to reinforce. The message is that engagement between management and employees is a key lever in making a difference in companies and a key mechanism of performance.

Much of the Bill addresses the problems of yesteryear, but I hope that we can start addressing the problems of the future, including how we optimise our performance in all areas, especially in business. Other places have made leaps and bounds in their public sector organisations and private sector companies through effective business process redesign, and it worries me hugely that we have not done as well here because we do not engage with employees as well as other places have shown is possible. In that area, we have a huge amount to do. That is why this sort of provision and process is important. We cannot forget the role of good management and good leadership in being able to make the sorts of changes that we want.

When we look at our public services and at the sorts of companies and adaptabilities that we want, we have to recognise that there is a massive role for management and leadership. I have never known of employees not wanting to engage with their management and leadership, and, apart from in the depths of some disputes, I have never known of trade unions not wishing to engage with management and leaders. But I have known far too many examples of when the management and leadership of companies have not taken that opportunity or not done it well enough. It would be very encouraging if the Government were to do something to ensure that people understood the importance of effective employee engagement and effective work with trade unions, which can make a huge difference to our country.

Lord Dykes: My Lords, I rise very briefly to congratulate the noble Baroness, Lady Prosser, on her proposed new clause. I hope that it will be fully and enthusiastically accepted in this debate today. This is a great opportunity to try to put right some of the deficiencies and weaknesses that we see even now in modern industrial relations in Britain, despite attempts at improvement from time to time.

The tragedy of the "them" and "us" disease—the two nations in industrial relations: the bosses and the employees—is still very strong. Incidentally, although this is not part of the Bill, the very fact that the highly paid executives who run companies are paying themselves far too much in comparison with what people earn on the shop floor is a very dangerous element that contributes to the anger and resentment that is felt in the great divide between the shop floor and the director's boardroom. It is a great tragedy that, given the modernisation that we expected, with foreign companies coming in and all that the Japanese and Koreans have done to create a new, more modern system, we have not yet made sufficient progress. However, we are beginning to.

I remember vividly that when I was a Member of Parliament for Harrow, more than 30 years ago, I visited within eight weeks the Volkswagen works in Wolfsburg in Germany and British Leyland. British Leyland was going through one of its perpetual crises, mainly because of not the unions but the failure of management to engage their employees and to liaise

[Lord Dykes]
with them properly. As you can imagine—I am not making this up—the meeting at the Wolfsburg Volkswagen works, one of the biggest motor works in Germany and the world in those days, started at 7.30 am. There was breakfast for an hour and a half, which was black coffee and black bread, and then a tour of the factory for two and a half hours. We then had an early lunch in the canteen, with the employees, directors and bosses eating at the same tables.

Some weeks later, I went to the British Leyland meeting, which, in contrast, started at 11.30 am. It was a half-hour visit to the factory, which was not very long, and we were told that we must make progress but could ask questions later. There was an hour of gin and tonics in the boardroom with the director—a very agreeable English habit that we have—and then a sumptuous lunch in the directors' dining room, miles away from the workers' canteen. That was a long time ago and I think that things have improved in many enterprises, so I should not decry that. But it is still not enough. There is still a sinister division between employees and employers in this country, and the pay gap is really menacing for the future of British society and its equilibrium. It has to be tackled one way or another—but that is not, of course, part of this Bill.

I very much agree with the remarks of the noble Lord, Lord Stoneham, and thank him for them. He has experience both of the corporate world and of assisting in trade union activities. He cast a warning about these matters, as did the noble Lord, Lord Mendelsohn. So the Government, having been in listening mode on some specific amendments to earlier aspects of the Bill, have a great opportunity now to re-educate some of their ministerial colleagues about these matters, because the "them" and "us" doctrine is deeply embedded among many Conservative Ministers still. That is a great tragedy for this country and does impede our efforts. We helped the Germans have a much healthier system when we were there as the occupying power after the war. What a great irony that was. So now we have an opportunity for Ministers to respond to these matters. This may be a very general matter and not a specific, technical amendment, but it is a very important new clause. I hope that the Government will respond very positively.

Baroness Neville-Rolfe: My Lords, I am very grateful for this opportunity to consider wider aspects of industrial relations in the Trade Union Bill. This conversation builds on the valuable debate initiated by the noble Lord, Lord Foulkes, last November, which I found extremely useful. The knowledge and expertise in this House is, as usual, impressive. I always agree with the noble Lord, Lord Mendelsohn, on the role of good management and the need to engage and inspire employees.

I thank the noble Lord, Lord Dykes, for joining the debate. He is right to mention the importance of appropriate executive remuneration. His tales of Germany reminded me of my time on a German board. But we need to bear in mind that the UK's growth and dynamism have been greater than Germany's in recent years. That matters to millions of employees and families right across our country.

I am very grateful to the noble Baroness, Lady Prosser, for bringing her amendment back again and to my noble friend Lord Courtown for the work that he has done with her on this important matter. The Government recognise the value of good employee engagement. We know that it contributes to improved productivity and business growth. Indeed, as a personnel director many years ago in the Civil Service and more recently from my first-hand experience through links with USDAW when I was at Tesco, I have definitely seen the benefits. I am grateful for the work on employee engagement by my department and others and am pleased that businesses are now more aware of its importance. In 2015, the CBI employment trends survey highlighted that a top priority for business in the coming year was better employee engagement to foster productive workplaces.

As the noble Baroness, Lady Prosser, has already told us, there has been a lot of activity. The Prime Minister launched the employee engagement task force in 2011. One of its main achievements has been the development of an employee engagement community, which has promoted the benefits and various approaches to employee engagement. The task force comprised a wide range of businesses, including entrepreneurs and HR professionals. In addition, ACAS has produced an online productivity tool to allow employers to look at which of the seven levers of productivity are most important. There is a range of guidance on each element, one of which is a "strong employee voice". I am sure that the noble Baroness, Lady Donaghy, would commend ACAS's work in this area, and support the work of her successor there, Sir Brendan Barber, in this matter. These initiatives and others have shown that employers want flexibility to decide how best to engage with their employees, and while unions play an important role, they are not the only mechanism for effective engagement.

This new clause would require the Secretary of State to issue a code of practice that would require all employers to establish a mechanism of employee engagement via trade unions. From my experience, I believe that a prescriptive approach would be ineffective. For small businesses and sectors that are not heavily unionised, having unions as the only mechanism for employee engagement would also be a practical challenge. While I do not believe that we should limit choice, I do agree that the role of employee engagement in positive industrial relations should be highlighted when we come to explain the changes to the industrial relations landscape brought about by the Trade Union Bill.

To pick up on what the noble Lord, Lord Stoneham, said, it struck me that there have been a lot of moves forward, but those initiatives do not have the salience that they need. I would be happy to commit my department to bring together interested parties to discuss not only existing work on employee engagement but how we can raise awareness of its importance as part of the changes that we bring in with the Bill—and how that can link in to the ongoing issue of productivity, which has been a priority for my department ever since the productivity plan we published last July. I hope that I have shown that the Government value the role of employee engagement and I ask the noble Baroness to withdraw her amendment.

Baroness Prosser: I am grateful to the Minister for that response and I am heartened by it. I have just a couple of points. The new amendment does not mention a code of practice. That was removed in the change on the basis that we wanted to ensure that we did not back the Government Front Bench into too much of a corner on this but we could leave open a way for proper discussion.

Baroness Neville-Rolfe: I should have said that. The powers are not the problem here; it is about what we do, in intent and communication, which is why I gave the noble Baroness the response that I did.

Baroness Prosser: I thank the Minister for that.

Secondly, employee engagement, and the mechanisms to bring it about, must of course take place in workplaces, whether or not they are unionised. That is the whole point. The evidence shows, and I think the Minister agrees, that there is a lot of good will and activity taking place, but there are always employers and organisations that are reluctant to get on the front foot. That is why we are looking for a little bit more of a push from the Government. I am grateful for the Minister's suggestion that we can continue to discuss this matter to find ways of taking it forward. On that basis, I beg leave to withdraw my amendment.

Amendment 31F withdrawn.

5.45 pm

Clause 21: Extent

Amendment 32

Moved by ***Baroness Morgan of Ely***

32: Clause 21, page 16, line 30, at end insert ", subject to subsection (2).

(2) This Act does not affect public bodies in Wales."

Baroness Morgan of Ely (Lab): My Lords, to many, it may seem that we do not need to debate the issue of the disapplication of this Bill to public services in Wales because we have gained those valuable concessions from the Government, particularly on facility time and check-off. I thank the Minster very much for listening to us and heeding our warnings and advice on that very important issue. However, it is important to stress a principle here, and that is what I want to discuss. We think that the Government have overstepped the mark on a matter of principle in that they should respect the devolution settlement of the UK. They tried to impose these measures on Wales without having the right or the powers to do so. We would just like to give a warning today not to try to overstep that mark again. We think that they were wrong to do it; it was a power grab and a mistake.

The Welsh Government, supported by a massive majority in the Senedd, have argued that public services are devolved and that their organisation should therefore be managed by Wales. By contrast, the UK Tory Government argued that employment is a reserved matter and is therefore their call. The situation in Scotland is different as it does not have a reserved model of government but a conferred one and the lines are more blurred in terms of who has the powers.

Today, the Labour Party launched its manifesto for the Assembly elections in Wales. It clearly states that,

"we will repeal sections of the UK Government's regressive Trade Union legislation in devolved areas".

It is there in black and white. Had these issues been pursued, the Welsh Government would have taken steps to overturn a measure which they believe is in their remit.

I am sure that noble Lords noted that I was very restrained in Committee and did not—for fear of further embarrassing the Government—refer to the leaked letter which came into our hands. In that letter—I was quite good then but the game is over now, so I can refer to it—the matter of whether the UK Government had the ability to legislate in this area in relation to Wales was discussed. I remind the Minister that the letter said that, according to advice from First Treasury Counsel, the Government have a,

"weak case in relation to Wales".

The Government had a weak case and it is still a weak case. I hope they will respect their own policies in relation to devolution. In the draft Wales Bill, written by this Government, it is stated that,

"it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Assembly".

I hope they will heed their own words and respect the devolution settlement for Wales.

Lord Wigley (PC): My Lords, I added my name to this amendment and I am glad to associate myself with almost everything the noble Baroness, Lady Morgan, said. I shall make an exception for the Labour manifesto, which has at long last appeared, and I contrast its rather thin guise with the 190 pages that Plaid Cymru has put forward—be that as it may. However, I welcome the progress that has been made in recent days, and particularly this afternoon, with regard to the Government's movement on these important matters. I hope it is an indication of a more positive approach to these issues and an avoidance of the unnecessary involvement of legislation in matters that should not have legislation.

Turning to the amendment, clearly the Government of Wales have relationships with employees in Wales directly, through their own responsibilities, and indirectly, with regard to such bodies as the health authorities and the local authorities in Wales. We have a saying in Wales: you can lead the workforce through hell and high water but once you start driving them, woe betide. There is a different industrial climate and it is a climate that begs a co-operative approach, as opposed to a top-down approach. Because of that difference, it is very important that the legislature at Westminster does not involve itself unless it is really necessary—and I cannot see why it would be necessary in such matters.

It would be good if the Minister could indicate from the Dispatch Box today that the Government take this on board and are particularly sensitive to the questions that have arisen from the disputes between

[LORD WIGLEY]
Westminster and the National Assembly—between the Government of Wales and the Government at Westminster—over the interpretation of legislation. The last thing we want is for that sort of dispute to lead to difficulties in working between the workforces and the Government.

In concluding, I draw the Minister's attention to the fact that we do not have a strike by junior doctors in Wales because there is an understanding between the employer and the doctors. It is an approach that I commend to Westminster and I urge the Minister to take note of this amendment and its implications.

Baroness Randerson (LD): My Lords, I frequently disagree with the way the Welsh Government operate but I defend totally their right to do so under the devolution settlement. If anything is within their rights, it must be their relationship with their employees.

Since the Agricultural Wages (Wales) Bill judgment by the Supreme Court, which occurred when I was a Minister in the Wales Office, it has been clear that the Government would not win on the issue at stake in this part of the Bill. The Welsh devolution settlement was simply much broader than we had all assumed, and that applied to the Welsh Government as well as to the Government here in Westminster. The new Bill, which is in draft form but will be extensively rewritten and I very much hope will come back next year, will probably provide much more certainty. However, we are working with the situation we are in now, with all its uncertainties and faults.

I say to the Government today, from my party: I have added my name to the amendment because we believe that the Government were well overstepping the mark on this issue. The Government must treat devolution with respect and not grudgingly. I regret that the concessions here have been made at the last minute, when the Government have their back against the wall. They should have seen reason a long time ago. However, for all that, I am very grateful that the Government have conceded on this issue.

Lord Hain (Lab): My Lords, I say to the noble Lord, Lord Wigley, that on election manifestos it is quality, not quantity, of words that counts in the end. In supporting this amendment, I refer to the Members' register, where I have declared an interest. I also remind the House, as did my noble friend Lady Morgan, that the Welsh Assembly, on a legislative consent Motion, voted against by 43 votes to 13—13 Conservatives—making very clear the Assembly's view on the principle here. They were voting not so much on the detail of the matters that we have been discussing in this House on this Bill but on the principle of the Government's seeking to override the devolution settlement under which devolved public services are devolved, as well as other services, such as agriculture.

That brings me to the question of the Supreme Court judgment in 2014, to which the noble Baroness, Lady Randerson, referred. That was very clear. Their Lordships made crystal clear their view that even though employment law was a reserved matter, nevertheless, in the operation of those services devolved to Wales—in this case, agriculture and the agricultural wages Bill that the Welsh Assembly had passed—that was a matter proper to the Welsh Assembly to legislate upon. The Supreme Court upheld that. I have seen legal opinions by an eminent QC, commissioned by the Wales TUC. I also know that the Welsh Government have had strong legal advice. Should it be necessary—it may still be—to go to the Supreme Court to challenge the UK Government's position on the principle involved, the Welsh Government would probably win.

As I said to the Minister earlier when speaking on the Enterprise Bill, at stake here is the principle of devolution. Where services and matters are devolved, that should be a matter for the Welsh Government and the Welsh Assembly to legislate upon, not for this Parliament.

I dealt with these issues in great detail on Second Reading on 11 January and also in Committee on 8 February, so I will not detain the House further with those detailed arguments. I would just caution that the future of the United Kingdom is at stake. We know that the Scottish Government want to take Scotland out of the United Kingdom. It does not do any service to those of us who believe in the importance of retaining the United Kingdom, for all the benefits that it brings us in making us stronger together rather than weaker apart, to undermine by the back door the devolution settlement in a way that, I fear and regret, the Government have been doing on this Bill.

I ask the Minister to reflect further and maybe come to an understanding with the Welsh Government and their Public Services Minister, Leighton Andrews, in particular. I know that the First Minister, Carwyn Jones, has written to the Prime Minister about the way that this will work in future. The new Wales Bill—which we understand will introduce a reserved powers model, although it has been hugely controversial—may resolve this matter, but it may not, as we saw with the Supreme Court judgment. I think that we must tread very carefully on this ground, and I regret that, on this occasion, in this Bill, the Government have not done so.

Lord Murphy of Torfaen (Lab): My Lords, I support my noble friend Lord Hain and other noble Lords who have spoken on this amendment. I urge the Ministers, who appear to be in a very gracious mood this afternoon, to extend this graciousness to this particular aspect of the Bill. Otherwise, it seems to me that what we are doing is actually legislating for future conflict between the devolved Administrations, in this case Wales, and the United Kingdom Government.

My noble friend Lord Hain has mentioned how the Agricultural Wages Board situation some years ago went to the Supreme Court. When he and I held the offices of Secretary of State for Wales and for Northern Ireland, we decided, as a Government, that the best way we could resolve disputes between the new devolved Governments and the United Kingdom Government was through discussion and dialogue. We therefore had interministerial conferences, joint ministerial governance and all sorts of committees that met to iron out differences of opinion between the Governments of Wales, of Northern Ireland, of Scotland and of the United Kingdom.

6 pm

The last thing we should be doing is going to the Supreme Court on issues that need not go there. On this issue, it seems to me self-evident that, although employment law is indeed a British matter, the effects on public services are devolved matters. If the Supreme Court goes the same way that it did on the Agricultural Wages Board, the chances are that the Government will lose. So what on earth is the point of making laws that we know will bring about constitutional differences? It is utterly pointless.

I hope that when the Government reflect on these issues in the next week or two, they will be able to come back to the House and indicate that this is unnecessary. They have been extremely generous today on check-off. We understand that the facility time provisions might be changed as well. There is not much left in terms of what the Welsh Government asked—although I think they also talked about the 40% threshold—but the issue is not particularly about the details of the Bill, but where this country goes in respecting the devolved Administrations.

I agree again with my noble friend Lord Hain when he said that we are in danger of breaking up. In my view, and that of my party, the best way to avoid the break-up of the United Kingdom is to ensure that we have effective devolved Governments that work together with the United Kingdom Government for the benefit of the people of all our nations and regions.

I also agree with the noble Lord, Lord Wigley, who mentioned that we have a different way of doing things in Wales. Yes, there is no junior doctors' strike there; there is a social contract between trade unions, the Government, local authorities and others in Wales that works well. Indeed, my noble friend Lady Prosser referred in the previous group of amendments to a civilised and sensible way we can deal with each other. So far as this matter is concerned, the civilised and sensible way is to drop the legislation and move forward in the spirit of the concessions that the Government have made this afternoon.

Baroness Neville-Rolfe: My Lords, we have had a relatively lengthy discussion, both in Committee and this evening, about the territorial reach of the Bill. We have thought about Wales, the home of my grandfather—although I do not think that that is quite a declaration of interest. I hope that we have made it clear today, clause by clause, that we are listening carefully to concerns raised by noble Lords. I heard what the noble Baroness, Lady Morgan, said about the helpfulness of the changes on facility time and check-off relating to the concerns about Wales. I congratulate her on the launch of her manifesto today—a good reason for speaking.

I am sorry to disappoint the noble Baroness as we never comment on leaked letters, but we had a discussion in Committee about the point raised by the noble Lord, Lord Hain, and about the Supreme Court judgment in the Agricultural Sector (Wales) Bill, which considered the competence of the Welsh Government where multiple subjects were at play. Of course, the court held that the Welsh Assembly had competence as the case concerned a situation where the devolved matter of agriculture was specifically in play. By contrast, this Bill is concerned with industrial relations, which is solely a reserved matter.

There are other cases that I will not go into at this moment, but the key point is that we cannot ignore the fundamental and well-established principle that there should be a unified system of law for certain matters. Employment and industrial relations law is one important example that has to apply consistently across Great Britain. Devolution of these matters, which is the effect of this penultimate amendment we are looking at, could lead to the differential treatment of workers and the development of a two-tier system, making it more difficult for workers to move freely within the labour market. That, of course, is why employment law is reserved in Scotland, and not conferred in Wales. The importance of having this single regime has been reconfirmed in the context of the Scotland Act which received Royal Assent recently.

The noble Lord, Lord Hain, sought, in our earlier discussion on the Enterprise Bill to look at the devolution of exit payments and suggested that our treatment of those was inconsistent with our treatment of the Trade Union Bill, to which we have now turned our attention. This is not correct. The Government of Wales Act 2006, which I referred to earlier, gives legislative competence to the Welsh Government for pensions and compensation payments to specific employers and for specific purposes. This is why the Welsh Assembly has regulation-making powers in relation to exit payments in the Enterprise Bill. In contrast, the Trade Union Bill is about employment and industrial relations law, which is not conferred on the Welsh Government—it is a wholly reserved matter, as I have said. The benefits it will bring should apply across the whole of Great Britain.

I appreciate that not all noble Lords share my assessment—hence this amendment—but I cannot accept that the way forward is to exclude certain public bodies outside England from specific provisions of the Bill. That would extend devolution by the back door and undermine discussions in the context of the Scotland Act and the draft Wales Bill. Parliament has put in place provisions for revising the devolution settlements. It would not be appropriate for this Bill, or others unrelated to constitutional devolution matters, to determine the boundaries of devolution in isolation. We are here today not to debate and amend the devolution settlements but to deliver our manifesto commitment for industrial relations and employment law.

In response to the noble Baroness, Lady Randerson, we do treat devolution with respect, as noble Lords can see, in many different ways, but I cannot agree with her or with the noble Lord, Lord Murphy, about the way forward on this amendment. Can we just consider the hugely significant impact of the amendment on the Bill? Under the amendment, none of the Bill's provisions would apply to any public body in Wales, regardless of whether the public body were devolved. That would mean that neither the 50% turnout threshold nor the 40% support threshold for important public services would apply to industrial action ballots in Welsh schools or Welsh hospitals. The threshold provisions in the Bill ensure that strike action only happens where

[Baroness Neville-Rolfe]
there is a strong and positive mandate. That is as important, it seems to me, in Cardiff and Wrexham as it is in London or Glasgow.

This amendment would also mean that ballot papers for industrial action in the DVLA or the Border Force in Wales would not be required to contain a summary of the matters in dispute, despite the fact that both bodies are responsible for matters that are solely reserved. Not only would this amendment therefore undermine the devolution settlement with Wales, and the principle that employment matters should be reserved, but there could also be unintended consequences, as I have highlighted. Where bodies have premises in Wales, there would have to be two different sets of rules for different workers by virtue of where they were located.

If the House were to approve the amendment today, it would set a precedent that future employment and industrial relations legislation would not apply to public bodies in Wales. We could anticipate a time when individual rights, such as protections from unfair dismissal, would not affect public bodies in Wales. I am sure that that is not what anybody wants, but we have to look at the implications of making a change in an area which is clearly reserved. Of course, we will continue to talk about the delivery of devolution in the weeks and months ahead, but I hope that I have explained our position clearly this evening.

Lord Hain: The Minister has been very generous this afternoon, but I fear that her generosity is now straying into dangerous territory. I am very concerned. May I point out that when Welsh Ministers start to read the text of the Minister's reply, they will find that she is digging herself into a deeper hole in this matter? Some of what she has said is very contentious on the interpretation of the devolution settlement for which I was largely responsible in the Government of Wales Act 2006, as Secretary of State. I am very concerned, if I may so, in the gentlest way possible, that she is reading from a civil servant's script that is seeking to get back some of the powers and responsibilities that have already been devolved.

Baroness Neville-Rolfe: I thank the noble Lord. I am certainly not seeking to make any changes. I said in response to a point made by a colleague that it was important to respect the devolution settlement. I am trying to explain that this is a reserved area and that if you change that there are implications of the kind that I outlined. That is why we feel strongly that this needs to be a national measure. It fits in well with the unified system that is needed for certain matters and takes account of the fact that employment and industrial relations law is reserved. Of course, as we discussed earlier in relation to the Enterprise Bill, there are particular detailed provisions—apprenticeships are a good example—where I completely understand that the Welsh Government create their own rules. What I am trying to do on this Bill is to make sure that we do not move into constitutional areas which are not appropriate for today's debate. I have also tried to explain that there is a risk of things being unworkable. I consider that the amendment has far-ranging implications which I cannot accept. I ask the noble Baroness to withdraw her amendment.

Baroness Randerson: My Lords, before the noble Baroness sits down, I simply raise the issue to which she referred in relation to employment law being reserved. This was what we thought was the case prior to the Agricultural Wages Board Supreme Court judgment. I am sure noble Lords can see that this is not as simple as it sounds, because agricultural wages were found to be an issue that was devolved to the Welsh Government. They are perilously close to employment law, are they not? I cannot see the difference between them. The truth of the matter is that the Supreme Court judgment determined that if something was not specified in the Government of Wales Act—

The Earl of Courtown (Con): My Lords, I ask the noble Baroness to give way. She knows as well as I do that this is Report stage of the Bill, and she can question the Minister on a material part of the Bill but she cannot make another speech.

Baroness Morgan of Ely: If the noble Baroness has finished, I shall move on. I am glad the Minister said that she has listened to our concerns. However, I am a bit disappointed by what she said this afternoon. I do not want to go on for too long as I know that we want to move on. However, the fact is that the conferred model is far more complicated than she made out. It is not the same as the Scottish model. The courts have said that it is different. There is already differential treatment between the way that workers—

Lord Elton (Con): With the leave of the House, I remind the noble Baroness that we are on Report. She is not asking a short question but rather making a speech.

Noble Lords: It is her amendment.

Lord Elton: I apologise. I came in late.

Baroness Morgan of Ely: The noble Lord should have been here when we were discussing this earlier, but there we go. It is important to note that there is differential treatment at the moment between workers in Wales and workers in England. To give noble Lords an example, every worker in the Welsh health service receives a living wage. That is a differential. Things are already different. The cat is out of the bag and you cannot put it back. That is the situation and it is important that it is respected. The Minister cannot possibly have any idea how health boards are managed in Wales as they are devolved. How can you say how much time they should have—or whether they should have any time at all—to discuss trade union matters?

We are not suffering a doctors' strike in Wales because we allow facility time to happen. The trade union movement and the managers of hospitals have made it absolutely clear that they think this would be a retrograde step that would lead to worse industrial relations.

I am disappointed that the Government have not quite understood the constitutional issues within the amendment, but this is a day to celebrate. We have won major concessions from the Government today and I do not want to end on a negative note. We will

come back to fighting the devolution corner and discussing the constitution of the United Kingdom. I want to celebrate the fact that we have had major concessions today and we are very grateful for them. I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Clause 22: Commencement

Amendments 33 and 34 not moved.

House adjourned at 6.16 pm.

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