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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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

Monday 21 November 2016

2.30 pm

Prayers—read by the Lord Bishop of Coventry.

Strategic Defence and Security Review
Question

2.37 pm

Asked by ***Lord Touhig***

To ask Her Majesty's Government whether they are intending to review the Strategic Defence and Security Review in relation to maintaining the size of the army at 82,000 personnel and increasing the size of the Royal Navy and Royal Air Force.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Government have no plans to reopen the strategic defence and security review. The national security strategy established clear national security objectives and the SDSR set out a funded plan to achieve them, all based on a clear-eyed assessment of the risks and threats that we face. Our energy is now devoted to its delivery, including the desired size of each of the armed services.

Lord Touhig (Lab): SDSR 2010 reduced the size of the Army from 102,000 to 95,000. Three years later, in Army 2020, this was further reduced to 82,000. Despite paying Capita £440 million to take over Army recruitment, this September we had an Army of just 76,000 trained personnel. But lo and behold, last Thursday the Government changed the definition of "trained personnel" and tell us that we now have an Army of 80,780—5,000 more this month than we had last month. Do the Government have any idea of the true size of the British Army, and when will they get to grips with recruitment, as both the Navy and the RAF are smaller than they promised they would be?

Earl Howe: My Lords, the key question is whether the Army is configured with enough strength to deliver the demands that we place upon it. We are clear that it is. The noble Lord is absolutely right that we have a way to go on recruitment, but the figures are heading in the right direction—that is, the inflow figures are looking encouraging. The change in definition of "trained strength" is simply a reversion to previous methods, which included phase 1 trained personnel as part of the trained strength, with their ability to engage in homeland resilience and in basic tasks that we place upon them within the UK.

Lord Boyce (CB): My Lords, Russia is growing in intent and capability. We are not only not matching either but we are shrinking in both. We do not have enough numbers in the RN and the RAF to man properly the equipment we have today. Brexit will surely demand that we be prepared to operate more autonomously. Surely the Government must realise that SDSR 2015 is not fit for purpose.

Earl Howe: The question is whether the Joint Force 2025 concept that we set out in the SDSR is the right choice for the current strategic context. We are clear that it is. It is a concept that is about making more effective use of our Armed Forces because it both invests in new capabilities and makes better use of the people we have. Of course, with more people and more equipment we could do more, but we are satisfied that the Armed Forces will be the right size to meet our defence and security policy requirements. I say that without wishing to give the impression that we are complacent, because we are not—these things are under constant review. However, we must remember that we face these challenges not alone but alongside our allies and partners.

Lord Sterling of Plaistow (Con): My Lords, the world has changed since the last review—it has been only a year, but think of what has happened and what has changed. As far as I am concerned, we are living in the most troublesome time of my lifetime, and I have lived through both the war and the confrontation with Russia. I have asked for permission to have a full defence debate in this House because this is a most serious subject. Does my noble friend agree that, because of what is happening in Europe and in the United States of America, not only has the situation changed but the demands placed on our armed services could be greater in the years to come?

Earl Howe: My Lords, I am sure that my noble friend's request will not have fallen on deaf ears as regards the usual channels. I am happy to speak to him afterwards about the possibility of a debate on these matters. We are not complacent about Russian capabilities, the political changes in the United States or Brexit. We remain, however, fully committed to NATO and our European partners, with whom we will deter threats across a wide spectrum in order to protect our people. We have a readiness action plan that we have developed with NATO. That gives NATO the tools needed to respond to short-notice, or indeed no-notice, incidents in order to protect alliance territory.

Baroness Jolly (LD): My Lords, our defence is supported by a skilled Civil Service. Will the Minister confirm whether the SDSR commitment to reduce MoD staff by 30% by 2020 is still on track and what proportion the Government anticipate will be carrying out the same role but with a new employer?

Earl Howe: It is too early for me to answer the last part of the noble Baroness's question, but I acknowledge that the last few percentage points in that 30% target are challenging—there is no doubt about that. At the same time, what we are impressing on our people is that to the extent that they are able to save money from a reduction in the Civil Service headcount, all that money is to be ploughed back into the defence budget under the efficiency agreement with the Treasury.

Lord West of Spithead (Lab): My Lords, I am afraid that the comfortable words about our defence forces just will not wash. I am delighted that, in this Chamber and in the other place, there is a growing ground-swell of people who understand that we have

[LORD WEST OF SPITHEAD]
not got sufficiently strong defence forces. That awareness is now growing in the public at large. This is a real concern, bearing in mind the risk. Is it possible to get the NSC to have a half-day's discussion, or ideally a day's discussion because it always meets for such short periods, to look at what capabilities we have—and my goodness me, they have been suffering death by a thousand cuts—and what that means for our position in the world and what we can do about the threats that are all around us?

Earl Howe: Again, my Lords, I am sure that that message can be conveyed very easily to the National Security Council. I recognise the concerns that the noble Lord has. It is no use denying that we live in a more dangerous and troublesome world. I come back to the Joint Force 2025 concept. It is a long-term programme, but it is designed to enable our Armed Forces to respond to a wider range of more sophisticated potential adversaries and complex real-world challenges. I believe that that is the right direction in which to go.

Lord Trefgarne (Con): My Lords, what is the present strength of the Territorial Army, and what contribution is it making to the figures given by my noble friend?

Earl Howe: My Lords, the Army Reserve, as it is now known, is currently 28,080 and our target is to reach 30,000 by 2020.

Lord Foulkes of Cumnock (Lab): My Lords, on configuration, why do we have 40 admirals and all their attendant costs? Would not that money be better spent on the front line?

Earl Howe: My Lords, I would refer the noble Lord and noble Lords in general to the Written Answer I gave on that very subject the other day, which explains that the number of admirals should not be taken in the context of the Royal Navy alone but in the much wider context of our NATO commitments and other commitments around the world.

Crime: Illegal Arms

Question

2.45 pm

Asked by ***Lord Harris of Haringey***

To ask Her Majesty's Government how many seizures of illegal arms entering the United Kingdom there were in the last year for which figures are available.

Lord Harris of Haringey (Lab): My Lords, I draw attention to my interests in the register and beg leave to ask the Question standing in my name on the Order Paper.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, between April 2015 and March 2016, Border Force seized 445 real firearms, 321 imitation firearms and 1,533 other items captured by firearms law. This is an increase on real firearm seizures from 2014-15, when 126 real firearms, 419 imitation firearms and 2,301 other items were seized. Border Force works closely with other law enforcement agencies to combat smuggling of firearms.

Lord Harris of Haringey: My Lords, that improvement is welcome but in July and August of this year, the Metropolitan Police recorded 202 firearms discharges in the London area compared with 87 in the same period in the previous year. A record number of firearms have been seized within the United Kingdom, so there is clearly a leakage of illegal firearms into the country. The resources of the UK Border Force are woefully spread too thinly to deal with the task. Its budget has been cut by £50 million in the past four years and there are 100 fewer staff. Why do we still consider it adequate to have three vessels patrolling 7,723 miles of coastline while 16 patrol the Netherlands coastline of 280 miles?

Baroness Williams of Trafford: My Lords, we have increased our maritime capability and Border Force is an active member of the joint Maritime Operations Centre, where it works closely with partner agencies. Border Force is working to enhance its capability by training more firearms dogs and improving detection technologies. The technologies have formed a critical part of the improvement in performance in this area.

Lord Wallace of Saltaire (LD): All these criminal networks smuggling into the country are cross-border and international, and the arms which are sloshing around the African continent and eastern Europe are smuggled by links of criminals across a range of different countries. As we withdraw from the European Union we are in severe risk of losing the co-operation in intelligence and policing that we have built up over the past 40 years. Can the Minister assure the House that, as this danger of arms smuggling rises for the UK, we are taking adequate steps to ensure that that crucial co-operation in intelligence and policing continues, and can she tell us something about the framework within which it will be organised?

Baroness Williams of Trafford: My Lords, I can confirm to the noble Lord that we intend to keep up and enhance our joint working capabilities at the border and between member states, both during our membership of the EU and afterwards.

Lord Cormack (Con): How many of these dogs are there and can they swim?

Baroness Williams of Trafford: Dogs are generally very good swimmers, my Lords. I will get the exact figures for my noble friend of how many dogs are used on any given day—perhaps today.

Lord Rosser (Lab): My Lords, given the figures that the Minister has read out, can she tell us what is the Government's estimate of the percentage of illegally imported firearms into the UK that are actually seized?

Baroness Williams of Trafford: Without doing the maths, I cannot give the noble Lord the figures off the top of my head. However, I will certainly write to him with accurate figures.

Lord Skelmersdale (Con): My Lords, in her original Answer my noble friend the Minister mentioned real firearms seizures, or words to that effect. Can she tell the House what the unreal firearms seizures are, and if so, why are they seized?

Baroness Williams of Trafford: I can tell my noble friend that "unreal" firearms include fake weapons and parts of firearms. BB guns, for example, are imitation guns, while others included in this group are bits of guns and other weapons like stun guns and pepper spray.

Lord Foulkes of Cumnock (Lab): My Lords, does the Minister think that there is anything our 40 admirals could do to help with this problem?

Baroness Williams of Trafford: I think that 40 admirals would come in very handy.

Lord Harris of Haringey: My Lords, the noble Baroness has talked about the Border Force collaborating with other forces. At most Question Times we hear from my noble friend Lord West about the problems with the Royal Navy. Are there really enough ships, vessels and aircraft patrolling our borders?

Baroness Williams of Trafford: My Lords, I think I made it clear in my follow-up response to the noble Lord that Border Force has invested in its maritime capability, having purchased a number of new coastal patrol vessels, four of which will be in service by April of next year. We have also invested in new technology which has hugely helped in detection.

Brexit: Medical Research and Innovation

Question

2.51 pm

Asked by ***Baroness Andrews***

To ask Her Majesty's Government, in the light of the numbers of European Union scientists working on British research programmes, what assessment they have made of the impact of the United Kingdom's exit from the European Union on medical research and innovation.

The Minister of State, Department for Business, Energy and Industrial Strategy (Baroness Neville-Rolfe) (Con): The Government are looking at more than 50 sectors and at the cross-cutting regulatory issues to build a detailed understanding of how withdrawing from the European Union will impact on the UK, including in the important area of medical research and innovation. The recently formed UK EU Life Sciences Steering Group is engaging with a wide range of stakeholders to help us ensure a positive outcome for this sector and for UK science.

Baroness Andrews (Lab): I am grateful to the noble Baroness for that Answer. Does she appreciate that what medical researchers in the UK really want to know is what is going to happen after Horizon 2020? Are the Government aware of the risk that there will be to the great progress now being made by UK researchers working with European teams, networks and funding in, for example, the treatment of cancer and rare diseases? If those researchers are excluded from the next research framework, Framework Programme 9, that progress will come to a halt. In short, can she say what specific plans the Government have to ensure that we are not excluded from framework 9?

Baroness Neville-Rolfe: My Lords, it is too early to speculate on our future relationship with Horizon 2020 and its successor programme, No. 9—I am assured that it is going to be given a better name. Whatever happens in the future, we are committed to ensuring that the UK continues to be a world leader in international research and innovation and that collaboration with Europe and others continues. Separately, and as part of our industrial strategy, the Prime Minister has today announced a substantial real-terms increase in government investment in R&D worth £2 billion per year by 2020 as well as a new industrial strategy challenge fund which will also help medical innovation. This is good news.

Baroness Morgan of Drefelin (CB): My Lords, perhaps I may remind the House of my interest in this area. The Minister in the other place said in June that the life sciences industry was worth around £60 billion a year to the UK and supports some 220,000 jobs, We in this House know that the role of the industry in promoting better patient outcomes through clinical research is absolutely vital. Is the Minister able to give us some reassurance that regulation will be put on a more even footing in the future, and will the Government commit to signing up to the agreed 2014 clinical trials regulations when they come into effect in 2018?

Baroness Neville-Rolfe: I entirely agree with the noble Baroness about the importance of our unique life science industries. Regarding the clinical trials regulation, preparations are continuing to implement that regulation in 2018 because we remain in the EU while negotiations continue. Of course, a great repeal Bill will come before Parliament after the next Queen's Speech. That will end the authority of EU law and return power to the UK, but we will transpose current EU law into domestic law while allowing for amendments to take account of the future negotiated UK-EU relationship in this and other areas.

Lord Foster of Bath (LD): My Lords, does the Minister accept that if we are to succeed in medical science research and innovation we need more home-grown science and maths graduates? That requires more science and maths teachers in our schools. Is she aware that teacher training targets are being missed, that vacancies are rising, that retention rates are falling, and that now more than a quarter of maths and science teachers have no relevant post A-level qualifications? What action are the Government taking?

Baroness Neville-Rolfe: The situation on STEM teaching is incredibly important. Indeed, thinking about our skills and how they relate to our industrial base, and our research and innovation will be a key strand of our industrial strategy, on which we will issue a consultation paper this side of Christmas.

Lord Anderson of Swansea (Lab): My Lords, is it not inevitable that we will lose the European Medicines Agency in Canary Wharf, with its consequent expertise and jobs?

Baroness Neville-Rolfe: All I can do is repeat that it is too early to speculate on detailed issues such as the future of the European Medicines Agency, but our approach remains to be fully open and supportive of scientists, researchers and our medical strength. This is particularly famous in the UK because of the National Health Service, which provides such a good base for our medical and pharmaceutical industries.

Lord Naseby (Con): Is my noble friend aware that one has only to go up to Cambridge and look at the number of start-up companies that are there, then open up the file on the new companies dealing with medical discovery going on the AIM market, to have some considerable reassurance that the industry is confident of the future, recognises that there will be some transitional challenges but, as before we joined the EU, will continue to be a leader in medical research?

Baroness Neville-Rolfe: I entirely agree with my noble friend. The fund for backing priority technologies, which we have announced today, will further support the UK's potential to turn strengths in research into a global, industrial and commercial lead.

Lord Kakkar (CB): My Lords, I declare an interest as professor of surgery at University College London and business ambassador for healthcare and life sciences. The announcement of £2 billion a year of additional funding to support research and development is most welcome, but are Her Majesty's Government able to confirm that that funding, in addition to driving an industrial strategy in this area, will be delivered through the activities of the research councils, secure excellence in terms of the purpose of research funding, and be used to ensure the ongoing participation of our great institutions in global collaborative networks, which are vital for the delivery of excellent science?

Baroness Neville-Rolfe: I entirely agree with the noble Lord on the excellence of our research and development base, and on the great work being done by the research councils. I look forward to debating the way forward when the Bill on education and research reaches this House in the coming weeks. New funding has been made available today. This vision and direction of travel is excellent news for our science and research base in every part of the country.

Lord Hunt of Kings Heath: My Lords, the Minister ducked the question on the European Medicines Agency. Will she answer a question about the MHRA, the UK medicines regulator, which is regarded as the finest regulator in Europe and is one factor behind the large investment in medical research in the UK? In the Brexit negotiations, will she ensure that there is mutual recognition, so that medicines licensed by the MHRA will continue to be recognised throughout Europe?

Baroness Neville-Rolfe: I will feed the noble Lord's suggestion into the process that is going on to make sure that we get the best deal in the Brexit negotiations on all these issues. He will know that Jo Johnson has a set up a forum with senior representatives of UK Research and Innovation to look at such matters, and that work continues in the Department of Health. This is a very important area. A lot of the detail is complex, but we are aware of that and, as I said in my opening comment, a great deal of work is going on.

Defence Contracts: British Steel

Question

3 pm

Asked by ***Lord Hoyle***

To ask Her Majesty's Government whether they are planning to require all future British defence contracts to specify the use of British steel exclusively.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, this Government are committed to supporting the British steel industry and we are addressing any barriers that prevent UK steel producers competing effectively in the open market. Defence steel requirements continue to be sourced by our prime contractors from a range of UK and international suppliers. This reflects the need to source specific grades of steel, not all of which are available in the UK, and ensures competitive cost, time and quality.

Lord Hoyle (Lab): However, it is not only on the replacement for the Trident submarine that foreign steel is being used but on the Royal Navy patrol vessels, for which 60% of the steel comes from Sweden. Will the Minister not apply Article 346, which will ensure some relief to our beleaguered steel industry and provide some job security for the hard-working, highly skilled steel employees?

Earl Howe: My Lords, along with the rest of the Government, the MoD is fully committed to supporting the British steel industry. Most defence steel requirements are sourced by our prime contractors; in fact, the British steel industry has proved very successful in those competitions. We are taking specific action across government. We are compensating energy-intensive manufacturers such as steel for the costs associated with renewables and climate change policy, worth £126 million to them. We secured flexibility over EU emissions regulations. We have made sure that social and economic factors can be taken into account when the Government procure steel. We have also successfully pressed for the introduction of trade defence instruments to protect UK steel producers from unfair steel dumping. There is a range of measures that we believe will help our industry compete even more effectively.

Lord Brookman (Lab): My Lords, I am rather surprised by the Minister's response to the question posed by my noble friend Lord Hoyle. It is a serious situation; it is not as simple as the Minister describes. Only last week, or the week before, the general secretary of Community, which used to be the Iron and Steel Trades Confederation—a union of which I was a fully paid-up member and still am—wrote to the Prime Minister spelling out in some detail the problems that workers in Port Talbot and elsewhere across the country face. It is not an issue simply of whether the Government

are dealing with the British steel industry fairly and properly; consideration needs to be given to making sure that for all the jobs that require steel—construction of the third runway, the Nissan car plant in Sunderland and elsewhere—the necessary support from the British Government is copper-bottom guaranteed.

Earl Howe: My Lords, the noble Lord is right: we have to acknowledge that the steel industry is currently dealing with very challenging global economic conditions. It is a global problem that I would maintain requires a global solution. We set up the Steel Council to work with all key stakeholders to explore actions that industry and government can take further to support the UK steel sector, but our aim is to leave no stone unturned. We have been addressing the asks of industry as I outlined in my earlier reply.

Baroness Jolly (LD): My Lords, this is an issue of value for British taxpayers' money and of our own industrial capability and capacity. What proportion of defence contracts is expected to be delivered by British suppliers and contractors? Are there any restrictions on using suppliers that are not British?

Earl Howe: My Lords, we have a policy to build our warships in British yards. Defence requirements for steel in that context are usually sourced by our prime contractors, taking into account—as the noble Baroness rightly said—value for money, quality and the time factor. We remain engaged with our prime contractors to ensure their support in implementing our policy guidance on steel procurement. That emphasises the importance of pre-market engagement activities to facilitate access to supply-chain opportunities for UK suppliers.

Lord West of Spithead (Lab): My Lords, at the risk of a cull on admirals, surely a good way forward would be to order more ships; you would then need more steel. Will the noble Earl confirm that the new solid support ships to be built will use British steel and not be built somewhere abroad? If they are built here with British steel, that helps British shipbuilding and our steel industry, which is a strategic necessity for a nation such as ours, the fifth richest in the world. We need that capability in our country.

Earl Howe: My Lords, the ambition of Sir John Parker in his national shipbuilding strategy is for UK shipyards to be in an excellent position to compete internationally for procurement opportunities such as the fleet solid support ships. The emerging principles of the strategy should be applicable to those ships without the need to restrict procurement to the UK.

Lord Touhig (Lab): My Lords, earlier this year the Government issued new policy guidelines to ensure that UK steel suppliers compete on a level playing field with international suppliers. They said that this would feed into our national shipbuilding strategy and that the Government regarded British steel manufacturing as vital to this programme. On 4 November, when the Defence Secretary announced plans to cut steel for the first batch of the new Type 26 ships, he was unable to confirm that British steel will be used. Can the Minister be clearer: will British steel be used? Can he list the British steel suppliers that won contracts to supply steel for the building of Royal Navy ships as a result of the policy announced earlier this year?

Earl Howe: My Lords, no steel has yet been produced for the Type 26 programme. UK steel suppliers will have an opportunity to bid for the work as part of an open competition. I believe that the Type 26 programme will secure hundreds of high-skilled shipbuilding jobs on the Clyde. In a wider context, it is worth noting that UK suppliers made a significant contribution to the supply of steel for our major defence programmes. The classic example of that is the Queen Elizabeth aircraft carriers, for which some 95,000 tonnes of steel used was British—88% of the content.

Pension Schemes Bill [HL]

Committee

3.07 pm

Relevant documents: 6th Report from the Delegated Powers Committee

Clause 1: Master Trust schemes: definition

Amendment 1

Moved by ***Lord Flight***

1: Clause 1, page 1, line 8, at end insert "and is not an AVC only scheme,"

Lord Flight (Con): My Lords, the intent of my Amendments 1, 3, 5 and 6—and, I believe, similarly the intent of the Opposition's Amendment 2—is to remove from the definition of master trust certain non-associated multi-employer schemes, known as NAMESs, that are supported by employers and are not run for profit. Such schemes are often industry-wide schemes set up to provide benefits for employees within a particular industry sector.

I have identified at least 12 of these schemes, with member numbers ranging from 900 to 340,000 and the value of assets ranging from £80 million to £48 billion. They include the Railways Pension Scheme, the Merchant Navy Officers Pension Fund, the Merchant Navy Ratings Pension Fund, the Plumbing & Mechanical Services (UK) Industry Pension Scheme, the Cheviot Trust, the ITB Pension Funds, the Industry-Wide Coal Staff Superannuation Scheme, the Industry Wide Mineworkers' Pension Scheme, the Motor Industry Pension Plan, the Pilots' National Pension Fund, the YMCA Pension and Assurance Plan, and the Registered Dock Workers' Pension Scheme.

The concern is that, without my amendments or other ways in which the Government may choose to address the issue, these schemes will need to comply with the new regulations on master trusts, despite being subject already to a very comprehensive regulatory regime. I had always understood that the intent of the new Government was not to double up regulation but to streamline it. I believe the USS—the Universities Superannuation Scheme—has raised this point already with the Department for Work and Pensions. I sympathise with its argument that such not-for-profit hybrid schemes should be excluded. By inserting,

[LORD FLIGHT]
"is not a relevant centralised scheme",

my Amendment 3 would create such an exclusion.

Mostly, the schemes are occupational pension schemes regulated by the Pensions Regulator. They do not have a commercial agenda and have not been established with a view to making a profit, unlike the commercial master trusts, which are surely the intended target of the Bill. The NAME schemes provide defined benefit—DB—pensions and so are subject to the scheme-specific funding requirements of the Pensions Act 2004. It is usual in schemes such as these for the participating employers to be liable for the expenses of running the scheme. When relying on employers to fund the scheme and to pay expenses, there is the risk of employer insolvency but this risk is faced by trustees of all occupational pension schemes, except where there is a government guarantee.

The reason many of these schemes will be caught by the definition of master trusts for the purposes of the Bill is that they give members the option to accrue money purchase benefits on top of their DB pensions by choosing to pay additional voluntary contributions. Having to comply with the requirements for master trusts would cause difficulties for many NAME schemes and result in additional expense for those employees and, ultimately, employees participating in such schemes. In particular, there will not usually be a person involved with a scheme who fits the requirements of being a "scheme funder". The Bill requires that a scheme funder,

"must be constituted as a separate legal entity",

and that the only activities it carries out relate directly to the master trust.

It is not entirely clear whether or not the drafting of my amendments in this technical area succeeds in excluding all NAME schemes that the Government might want to carve out of being a master trust, and it is impossible to know what different pension arrangements may be developed in the future. The amendments therefore include a regulation-making power to enable the Secretary of State to remove further schemes from the definition of master trust.

I have referred to the Universities Superannuation Scheme, which is a classic example. Its starting position is that it believes it is "unintended, unnecessary and burdensome" that,

"hybrid schemes such as USS, which provide pension benefits for multiple non-connected employers … will be caught by the new regulation".

It would like to see the definition of master trusts clarified in secondary legislation to ensure that it targets only those schemes which are currently subject to inadequate regulation.

I feel sure that it is not the Government's intent that these NAME schemes should be covered by the definition of master trusts. If the particular changes that my amendment proposes are not to the Government's liking, or if they think that it does not work, I hope to hear that they have alternative proposals to deal with these issues.

3.15 pm

Lord McKenzie of Luton (Lab): My Lords, I shall speak to Amendment 2, which we have in this group. I say to the noble Lord, Lord Flight, that the intent of our amendment is not to take schemes out of the definition of master trusts but to probe where those boundaries currently are, because there is a lack of clarity in some respects.

Before I touch upon the detail of the amendment, it might be helpful if I set out the context in which we plan to approach Committee. We have already made clear our support for the thrust of the Bill and what it seeks to do, but much of the detail is missing and will depend on regulations, at least some to be informed by further consultation. There are policy gaps, as well as gaps in the operational detail. The impact assessment recites that there is still,

"significant uncertainty over the full impacts of the proposal, as costs will be determined by the details to be set out in subsequent secondary legislation".

Additional costs for master trusts and for the Pensions Regulator cannot currently be determined, as the charging structure has yet to be finalised.

The Constitution Committee has also commented on the degree of delegation in the Bill. It instances Clause 24(4), which lists 15 matters that regulations must address relating to continuity option 1. It also draws attention to the wide provisions of Clause 39, which would allow the Secretary of State to adjust the range of pension schemes to which Part 1 of the Bill applies, either to extend the regime or to disapply it in whole or in part. We will come back to this extraordinarily wide provision later. This almost turns on its head the normal approach, which is to determine policy first and then to legislate. We accept the importance of having flexibility to deal with the changing models which an agile sector might bring forward, but in scrutinising this legislation we need to have the opportunity to test the boundaries of that flexibility. I think it has already been indicated that we will not get a full set of draft regulations before the Bill leaves your Lordships' House, but perhaps the Minister will set out when we might see the drafts of key regulations, as we have requested, or at least policy notes to expand on their intended coverage. In the meantime, we will proceed with a range of probing amendments to flesh out as much detail as possible.

The purpose of Amendment 2, in my name and that of my noble friend Lady Drake, is to probe why the Bill excludes single-employer occupational schemes from the scope of its provisions and why connected employers are therefore effectively treated as one. As it stands, the Bill would leave single/connected employer arrangements regulated as at present. These arrangements sit alongside the regulation of group personal pension plans, which is within the remit of the FCA, so we will be going from two approaches to three.

We understand the reasons why the existing regulation for trust-based schemes is inadequate, notwithstanding some prospects for improvement under the assurance framework and the 2015 code. It is inadequate to deal with master trusts, which have developed new types of business structures. This can alter the relationship between members, employers, trustees and providers,

with some being run on a profit basis but not all, as the noble Lord, Lord Flight, indicated. The scale of some of them is also unprecedented in occupational pensions.

Our probing amendment is designed to give the Government the opportunity to put on record the overall scope of the new regulatory environment to justify how it all fits together and that the boundaries of the system are clear and do not overlap. We accept that the master trust regime is focused on schemes with particular risks, but does there not have to be some consistency across the piece? As it stands, the definition of master trust is potentially very broad. We do not particularly have a problem with that, but it can cover those set up by unregulated businesses as well as those set up by regulated businesses, such as insurance companies or investment managers. It can also cover what are described as "white label" master trusts, which are set up by a pension provider with commercial or non-commercial partners being allowed to brand their sections of the trust. Others may have partnering arrangements with large employers where each employer gets its own section of the master trust but does not make any profit from it. Schemes can include industry-wide schemes and schemes that happen to include two or more unassociated companies and schemes in the university, charitable and religious sectors. So within the master trust definition there are a range of differing situations, and a question arises about whether the line to exclude single unconnected employer arrangements is the appropriate line to draw.

The amendment also seeks, as a probe, to delete the exclusion from the definition of a master trust those schemes which are to be used only by connected employers. I have some questions on that. What is the position where a scheme starts life as a scheme for connected group employers only, but where one of the employers enters into a time-limited joint venture which causes it to cease to be connected? Does it then have to seek approval to operate? What is the position when the joint venture has run its course and the scheme reverts to being used only by employers which are connected? How do the Government justify the juxtaposition of a connected group of employers being outside the scope of the Bill and another connected group of similar size but with just one small associated employer presumably being inside it? This is a very thin distinguishing line. Are there any circumstances currently envisaged where Clause 39 would be used to bring within the scope of the Bill a single-employer occupational pension scheme?

So far as the amendment moved by the noble Lord, Lord Flight, is concerned, it is understood that AVC-only schemes are a type of arrangement that has been developed of late, prompted by the introduction of the Pensions Regulator DC code of practice, which introduced a degree of comprehensive governance and management tests for DB schemes where the only DC benefits are AVCs. It is suggested that the new code can lead to disproportionate costs—hence the plan to remove AVCs from individual DB schemes and corral them in a master trust. As we have heard, the proposition now is to remove them from this Bill's provisions. Presumably, this implies that the current regulatory regime, as enhanced by the April 2015 changes, would continue to operate. However, in so far as comfort is being taken from the voluntary master trust assurance framework, its future is uncertain. We wonder whether that should be relied upon. In any event, do not such arrangements—that is, AVC-only schemes—exhibit at least some of the risks which this legislation is seeking to address, such as the existence of providers, funders, the profit motive and the promotion of the scheme? In the circumstances, it is difficult to see why they should be outside the Bill, acknowledging that some may have been created specifically to take advantage of the current regime.

We have a similar position in relation to the other group of schemes to which the noble Lord referred. So far as the noble Lord's amendment about having the power to modify the Bill is concerned, the Bill already provides that power. In fact, we think the power is too broad and do not like it. We look forward to the Minister's comments.

Lord Naseby (Con): My Lords, I support my noble friend Lord Flight in his amendments, in broad terms. The Minister will recall that at Second Reading, at col. 570, I raised the question of mutuals and the mutual movement. His noble friend on the Front Bench confirmed that since a great many of them were defined benefit pension schemes, they would be outside the scope of the Bill. However, that does not take everybody out. Since that time I have had discussions with the Universities Superannuation Scheme. It is perhaps a bit of an oddball, but it is deeply concerned about the Bill and its effect on it and its members. Its representatives emphasised to me in our meeting that they were very much behind the intention of the Bill—so it is not a question of some organisation trying to undermine the situation.

They made three particular points on why the Universities Superannuation Scheme should not be subject to the Bill. First, there is,

"the comprehensive regulatory regime already in operation for hybrid schemes, which already provides a well-established, ample level of protection for pension savers".

Secondly,

"the protection already afforded to USS members with Defined Contribution … benefits both under statute and the scheme rules, whereby the DC benefits are underwritten by the whole fund (DB and DC) which means that the only circumstances where DC benefits could not be fully satisfied would be where the whole scheme fund (assets currently circa £49 billion) was depleted in full".

Lastly, there are,

"the anticipated costs of compliance"—

a common thread that has been raised by noble friends across the House. The cost of compliance is estimated at,

"in the region of £10.5 million in order to satisfy the financial sustainability requirements over 2 years, plus a further £250,000 per annum for compliance with the requirements of the Bill, which would be funded from the scheme assets".

I hope very much that the Minister will take these points on board. I do not expect a full and complete answer this afternoon, but I would have thought that schemes such as this—there probably are others that have not been brought to noble Lords' attention—could be dealt with in secondary legislation. It certainly seems to me that they need to be addressed at some

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point. All I am seeking this afternoon is a reassurance that my noble friend recognises that there are some schemes out there that should not be covered by the Bill but may need to be covered in some form in the regulations. I look forward to his response.

Baroness Altmann (Con): My Lords, I will make just a few remarks at this stage. My noble friend Lord Flight mentioned the position of the NAME schemes. There are significant problems with the DB sections of those schemes, and a number of employers have written to me who are about to go personally bankrupt because they cannot meet the obligations—and that is setting aside the defined contribution issue that we are talking about today. From the perspective of the Universities Superannuation Scheme and other schemes that may have AVC-only sections to them, it would seem to me that we cannot, given the intentions of the Bill to protect scheme members' benefits in the event of wind-up, just assume that the money will come from somewhere if there is not any proper provision for it—and currently there is not. It would suggest—my noble friend the Minister might consider this—that there may be a case for extending the Pension Protection Fund itself, which already covers the DB benefits of those schemes, to take care of any residual risk in the AVC section.

Indeed, the capital adequacy mentioned in the Bill will not necessarily achieve the aim that the Pension Protection Fund achieves for defined benefit schemes. In the event of wind-up, with a scheme's records in disarray, it is not clear that any initial estimate of capital adequacy might be sufficient to cover those costs. I would be grateful for some comment from the Minister on the possibility of some sort of backstop or tail-risk insurance. That could also pick up the AVC schemes that have been mentioned. I understand the points that have been made there.

3.30 pm

Lord Kirkwood of Kirkhope (LD): My Lords, I wonder if I could make a short contribution on this amendment. I declare an interest: I am chair of a DB scheme for the superannuation fund for the GMC and have been chair for a number of years. It is a DB scheme and I do not have as much experience of DC schemes, but I am interested in the Bill. I am sorry that I was abroad when the Second Reading debate took place; I have read it carefully and some very powerful speeches were made.

We have heard again from the noble Lord, Lord Naseby, on the important point about mutuals and AVCs. An important point about AVCs has also been made by the noble Lord, Lord Flight, and I hope we will get some kind of indication about how the Government are going to respond to that.

My real reason for speaking is to support the comments by the noble Lord, Lord McKenzie. I have been doing legislation of this kind for some time, and this is by some margin the most statutory-instrument-framework type of Bill that I have come across. I understand perfectly well that there are reasons for this; long consultations about some of the problems that the Bill addresses could have provoked some of the outcomes we are trying to avoid. But I spent the weekend looking at the Bill and found that its vagueness—in terms of the policy that is left to the Government to decide at a later stage, much of it through negative rather than affirmative regulations, as currently set out in the Bill—makes it impossible to fit the pieces together properly.

I may be revealing my lack of experience—there are other colleagues in the Committee who know far more about some of the detailed aspects of master trusts—but I make a real plea to the noble Lord, Lord Freud, who has experience of dealing with concerns of this kind on all sides of the House from other Bills in the past.

Policy notes are one way of doing that. I do not think anyone is seeking to stop, hold back or prevent any of the ambitious and necessary outcomes that the Bill seeks to achieve, but we could well be in a position of being presented with statutory instruments in an undesirable way. We have had some conversations about what powers we in this House should properly have over secondary legislation and how we should exercise them. I think that can be avoided if the Minister adopts his tactic of consulting at every opportunity—at the appropriate moment as soon as the policy is finalised; offline, as it were—and with some policy notes. Then we will be confident that it will be safe for us to sign off Royal Assent for the Bill in the expectation that every opportunity will be taken by Ministers at every stage, if they cannot provide draft statutory instruments, to make alternative arrangements such as policy notes so we can be sure that we know what we are voting for and considering in secondary legislation. That is a very important point that the noble Lord, Lord McKenzie, made.

The Constitution Committee does not do notes of this kind unless it is seriously concerned, and we as a Committee would be foolish not to pay careful attention to the fact that it is urgently drawing matters of this kind to our attention. So I hope that we can get some kind of reassurance on that point from the Minister on the wind-up on these important amendments.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): Clause 1 is critical to the Bill. It sets out the scope for the regime, so I welcome these considered amendments, which give us the opportunity to explore this important clause in detail.

We have taken considerable care in defining master trusts and setting the scope for the new authorisation regime. The guiding principles throughout have been twofold: the first is to ensure that members are protected against the risks that arise in these new structures; the second is to ensure that the extent of any regulation is proportionate.

For example, the definition applies to schemes which are open to more than one employer because the level of engagement and involvement of the employers and scale of such a scheme is likely to be very different from that of a single employer scheme or a scheme in which all the employers are part of the same corporate group. It applies only to schemes which offer money purchase benefits because of the risks that the member bears in relation to such benefits, but we have been careful not to create a loophole for schemes which offer mixed benefits—as we will come on to later.

However, we also need to be mindful of the fact that master trusts are a recent development in a rapidly changing pensions landscape, and the master trust market is evolving all the time. A one-size-fits-all regime may not be proportionate, and we therefore need flexibility to be able to respond to the needs and changes. It is for this reason that Clause 39—which we will come to later in Committee—makes provision allowing for the disapplication of some or all provisions of the Bill for certain schemes.

Turning to the specific amendments, my noble friend Lord Flight seeks to exclude from the definition "AVC only" and "relevant centralised" schemes. I have sympathy with his intentions. Many defined benefit schemes offer AVCs for historic reasons and could be considered to be DB schemes to all intents and purposes, but schemes such as this could be excluded from regulation under our powers under Clause 39, and we prefer to use this power rather than to create a list of exemptions in the Bill, allowing time for more detailed consultation with industry about the diverse types of scheme that currently exist.

I put it on record that our intent is to propose such a carve-out. That is: we intend to consult on regulations under Clause 39(1)(b) to disapply some or all of the provisions of the regime for a mixed benefit master trust scheme, where the only money purchase benefits are those related to additional voluntary contributions of non-money purchase members, but we will also be considering carefully the need to avoid creating any avoidance loopholes as we go through that process.

In relation to the relevant centralised schemes, I am concerned that my noble friend's amendment may go too far. The definition to which he refers is not confined to industry-wide or not-for-profit schemes, and although there may be a case for excluding some such schemes, I am wary of creating a loophole.

Our aim is to protect members from the risks that are particular to master trusts, and these may equally arise in industry-wide schemes. Similarly, although it is true that most master trusts are run for profit, and that this gives rise to certain risks which the regime seeks to protect, it is not this feature alone which determines the nature of master trusts.

I am grateful for the amendment tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake. As the noble Lord said, it is a probing amendment to investigate the boundaries of the definition. The amendment would change the definition of master trusts in the Bill and extend it to all schemes which offer money purchase benefits, including those which are used by only a single employer or employers connected to each other.

On the noble Lord's question of how and when we plan to consult on draft regulations, and indeed on the question asked by the noble Lord, Lord Kirkwood, we have worked with the industry and the regulator to establish the key criteria for master trust authorisation. We intend to continue these discussions to develop more detailed policy and secondary legislation. We will follow the published government principles to ensure that consultation is an ongoing process, using the most appropriate forms of communication. The timing of that formal consultation on draft regulations will depend on a number of factors. We anticipate that the initial consultation to inform the regulations may take place in autumn 2017. I hope that that gives the noble Lord, Lord Kirkwood, some reassurance about the process.

The amendment would extend the scope of the definition and the authorisation regime considerably and would do so in a way that would be disproportionate. To take the example of the scheme starting as a single group employer picking up a non-associated one and moving back and forth, if the scheme is intended to be used for more than one unconnected employer, it is within the scope of the regime. If it starts with only connected employers but takes on an unconnected employer, it will fall within the regime at the point that it takes on the unconnected employer.

Lord McKenzie of Luton: Will the noble Lord help me on that point while it is on my mind? If you take on an associated entity and therefore have to join the scheme, what happens if you have a joint venture and that joint venture comes to an end? Are you perpetually in and out of the scheme? How does that work?

Lord Freud: In practice, one has to be fairly formal about the definition. The noble Lord has drawn up an example of a potential revolving door which I suspect may be in the black swan category. I will take that point away. I need not write to him on it because we will have a chance to come back to it, or I will make sure that we do. He describes a very volatile situation, but I suspect the very existence of a precise regime will tend to stop people doing that kind of thing unnecessarily, or without a very good reason.

On the question of bringing into the regulations schemes that have only one employer, we are currently considering whether some schemes offering decumulation-only benefits have the same rules as some master trusts. Any use of the powers to deal with this issue will clearly be subject to the affirmative procedure. My noble friend Lady Altmann asked whether PPF could be extended; an amendment has been tabled—I think it is Amendment 18—to explore this issue, and we will deal with it when we reach that point.

Much of our debate at Second Reading indicated that there is general acknowledgement that further regulation of master trusts is both desirable and necessary. Master trusts have developed in part in response to the success of the automatic enrolment programme emerging as a different kind of beast to the traditional structures that have existed in the occupational pensions sphere.

There is much to recommend master trusts as the schemes of choice for employers and members. They can drive value for money due to competition in the market and the economies of scale and offer a neat solution for smaller employers, for whom setting up an individual pension scheme for employees would be impractical and burdensome. But these very qualities also give rise to new risks that are not present in single employer defined contribution schemes in the same way. In a single employer scheme, the employer is typically far more closely involved in the running of the scheme and tends to have a more active relationship

[LORD FREUD]
with the trustees. With master trusts used for automatic enrolment, employer involvement is generally limited to paying over the employer contribution. The different dynamics that exist in master trusts give rise to the need for a different approach to ensure that members are properly protected. These issues do not arise in the same way in single employer or connected employer schemes, and it is for this reason that we have been careful to confine the definition to multi-employer schemes in which the employers are not all connected.

3.45 pm

Baroness Altmann: I ask my noble friend for some reassurance on the issue of defining the whole structure via the word employer. An employer in a single employer scheme may be considered a single employer but they may be attracting money from members who used to work for other employers and do not currently accrue. Therefore, I hope that the intention of the Government for the Bill is that it should apply in the case where there is a single employer but he has attracted money from people who worked for other employers in the past. I recognise that my noble friend says that this may be captured in Clause 39, but I would be grateful for some reassurance on that point.

Lord Freud: At the moment, these schemes would not be within the master trusts legislation. I cannot give a full answer now because I am not sure what other protections there may be for people in this situation, but we will have a chance to come back to this issue again and again and I shall make sure that we have a dialogue on this point later, as we consider the Bill in Committee.

This Bill addresses the risks that arise in master trusts. It is important to remember that these risks are specific to this particular type of structure, and it is therefore important that the definition reflects those structures and does not go wider. This ensures that the regulation in the Bill is a proportionate response to the issues arising. I hope that with these explanations and assurances particularly on the process of consultation, noble Lords are reassured, and I ask them not to press their amendments.

Lord McKenzie of Luton: In relation to the use of Clause 39 for carve-outs, is it envisaged that that will be done on a broad scheme basis or on an individual scheme basis? How will it work in practice? Will it be a carve-out for a defined type of scheme, as in the AVC scheme referred to, or could it be more specific?

Lord Freud: We will come on to discussing Clause 39 later, but I think that it will be fairly specific—sorry, no, I think that it will not be specific. It will be general types.

Lord Naseby: I raised a point on the specifics of the universities superannuation scheme, which is really very large. I do not expect a concrete answer this afternoon, but could my noble friend cover it for me in writing or make sure that it comes back in some form so that the universities can be reassured?

Lord Freud: Yes, I think that we will come back to that issue—and, if we do not, I shall make sure to write to the noble Lord before the end of the Committee stage.

Lord Flight: My Lords, I am pleased to hear the Minister advise that Clause 39 will be used for further consultation, and that he is certainly minded to introduce a carve-out for AVCs. I would like to push the case for NAME as well, particularly as regards the arguments made by the university schemes. However, I understand the Government's reservations here. Considerable further discussions with the industry are needed. On the basis of such constructive use of Clause 39, I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Amendment 4

Moved by ***Baroness Drake***

4: Clause 1, page 1, line 13, leave out subsection (2)

Baroness Drake (Lab): My Lords, I refer to the interests that I recorded at Second Reading. I will speak also to the other amendments in this group. In part, these amendments are probing to understand what happens to non-money purchase benefits in master trusts under the Bill.

Clause 1(2), taken together with other clauses, means that the Bill applies only to money purchase benefits provided through a master trust, and excludes non-money purchase benefits. This means that potentially some of the members' benefits provided by these schemes, including retirement products, are excluded from key protections in the Bill. On first consideration of that clause, it does not seem fair or sensible to exclude certain members' assets from all of the Bill's provisions. Master trusts can provide a variety of services both to employers under auto-enrolment and to individuals exercising pension freedoms. The master trusts may provide at-retirement products, such as annuities, guaranteed draw-down, and investment products which include some form of guaranteed rate of return. Annuity payments, for example, may be paid to the member but the actual annuities supporting those payments may be held as an asset of the scheme rather than in the name of the member. How are savers protected in that situation? Pension freedoms have seen the annuity market shrink, and they may radically transform the market for guaranteed income products. Pension savers will still have an appetite for some form of guaranteed product. The Bill will not apply to non-money purchase benefits, so it is unclear what happens to those benefits and, importantly, the assets backing them, when the master trust fails.

Master trusts are innovative. One such trust, for example, allows members to add in other savings and assets such as ISAs and property used for funding retirement. I read that, of the approximately 100 master trusts, only 59 are being used for auto-enrolment. Some have blossomed on the back of pension freedoms.

Regulation should anticipate that master trusts will expand further into the decumulation market of retirement products. The exclusion of non-money purchase benefits raises three important issues. It is not clear what happens to the treatment of all non-money purchase benefits, and the assets backing them, in the event of a wind-up or other triggering event occurring. Will those members' benefits be protected against funding the costs of a triggering event, and how, and where, will they be transferred on exit?

The Government's position is that all the requirements in the Bill bite only in relation to money purchase elements in the scheme because other legislation protects non-money purchase benefits. But will all retirement products with an element of guarantee be covered by the PPF regime? I doubt it. Master trusts are not regulated by the FCA, so where does the saver look for protection?

The continuity strategy required under Clause 12 in the event of a wind-up will have to set out how the interests of members of a scheme in receipt of money purchase benefits are to be protected in a triggering event, but it appears that it will not have to set out how members in receipt of non-money purchase benefits will be protected. Such a requirement would at least clarify what range of member benefits were in the master trust; Amendment 26 in this group addresses this issue. Will master trusts be required to set out how members with non-money purchase benefits will also be protected if a triggering event occurs?

Amendment 16 provides for any assessment of a master trust's capital adequacy backing money purchase benefits, required under Clause 8, not to take account of resources related to benefits other than money purchase benefits. There is only a brief reference—in Clause 38(2)—to both money and non-money purchase benefits being included in a master trust account. How will this work in practice? Will master trust accounts have to be disaggregated by type of benefit? Will requirements be imposed to identify the assets backing money purchase benefits, those backing non-money purchase benefits and any cross-subsidies between the two? Is it the intention that none of the assets backing non-money purchase benefits could be used to fulfil the requirements for financial stability under Clause 8 or to meet costs arising from a triggering event, including wind-up? The Bill raises uncertainties as to the treatment of the different categories of benefits at authorisation, ongoing supervision and when a triggering event occurs.

Finally, Clause 8, to which Amendments 16 and 17 are directed, is the capital adequacy provision clause. At Second Reading, several Peers expressed concerns about the adequacy of these provisions. The terms used are rather open-ended and will require implementing instructions, of which we have yet to see a draft. Concepts such as "sustainability" and "sound" are undefined, and the Bill does not include any explanation of what is meant by a scheme having sufficient financial resources. Even the reference to a scheme holding sufficient resources to continue running as a scheme for between six months and two years means that there is a big gap between the minimum and the maximum requirements. Yet the capital adequacy regime is intended to be the cornerstone or linchpin protecting members in a master trust in the event of its failure.

I will return to these arguments in more detail when we reach Amendment 21 in my name and that of my noble friend Lord McKenzie, but they are compelling reasons why Amendment 17 seeks regulations under Clause 8 to be subject to the affirmative rather than the negative resolution procedure set out in the Bill.

Lord Freud: My Lords, I am grateful to the noble Lord and the noble Baroness for tabling these amendments. Amendments 4, 16 and 26 relate to the question of how non-money purchase benefits in a master trust are dealt with and affected by the new regime, and Amendment 17 raises the question of the appropriate parliamentary procedure for regulations under Clause 8.

I will first deal with the question of non-money purchase benefits, as we have given a great deal of thought to it in developing the Bill. Amendment 4 seeks to amend Clause 1(2) so that the provisions apply to non-money purchase benefits in master trust schemes. Amendment 16 seeks to ensure that the Pensions Regulator does not take account of resources which relate to non-money purchase benefits in assessing whether the scheme has sufficient financial resources.

Amendment 26 seeks to ensure that master trusts set out the protections for non-money purchase benefits in their continuity strategy. Many master trusts will be money purchase schemes—that is, they will provide only money purchase benefits. However, a number provide both money purchase and non-money purchase benefits, and we therefore need to make provision to take account of this. As we have previously discussed, it is important that we do not create a loophole for schemes that offer mixed benefits. However, the policy intent is to specifically address certain risks that apply to members in master trusts related to the nature of the structure and funding of these schemes. These types of risk are managed in different ways in relation to non-money purchase benefits, and it is the risks around money purchase benefits that the Bill is focused on addressing.

4 pm

If the authorisation regime were to apply to non-money purchase benefits, such as salary-related pensions, this would create duplication of regulation and add additional unnecessary costs and burdens to the running of those schemes, with little purpose in terms of protecting members. This is because there is already extensive regulation of occupational pension schemes providing non-money purchase benefits, regarding funding requirements, employer debt provision and winding up, for example. Non-money purchase benefits are not generally offered by schemes aiming to make a profit. They are calculated according to what is promised rather than solely by reference to the funds available in the members' pot.

These factors mean that requirements for the set-up and administration of master trusts which are necessary for money purchase benefits are not appropriate for non-money purchase benefits. Requiring them to apply across the board would be unnecessary and

[LORD FREUD]

disproportionate. Indeed, in some cases it would give rise to potential conflict and confusion. For example, the provisions requiring transfer of member benefits and wind-up of the scheme where there is a triggering event that cannot be resolved, or where the Pensions Regulator withdraws authorisation might have a detrimental impact on members in relation to the non-money purchase benefits if they were to apply.

We have taken care to craft the authorisation regime, including the authorisation criteria, so that it addresses the risks that arise for master trusts offering money purchase benefits. It would not therefore be appropriate for the regime to extend to other types of benefits for which it is not designed and where these risks do not arise in the same way. For this reason, we have made provision for non-money purchase benefits to be generally disregarded for the purposes of the new authorisation regime, and that is why I cannot accept Amendment 4.

For the same reason, I am, conversely, in agreement with the intention behind Amendment 16. We do not wish the Pensions Regulator to be able to take account of resources that relate to non-money purchase benefits. As I have explained, the Bill achieves this already through the provision at Clause 1(2), which the noble Lord and the noble Baroness seek to remove with Amendment 4. In determining whether the master trust is financially sustainable, the Pensions Regulator will be able to take account only of resources that relate to the money purchase part of the scheme. Anything relating to the non-money purchase part of the scheme is to be disregarded. For this reason, Amendment 16 is unnecessary.

Amendment 26 seeks to ensure that master trusts set out the protections for non-money purchase benefits in their continuity strategy. We will discuss continuity strategies in more detail in due course. By way of background for present purposes, a continuity strategy is a document that addresses how the interests of the scheme members will be protected if the scheme experiences a triggering event—that is, an event that could put the scheme's future at risk. The aim behind the continuity strategy requirements is to try to ensure that members continue to save in a pension even when the scheme of which they are a member experiences an event that could put its future at risk.

Amendment 26 seeks to ensure that a master trust's continuity strategy includes information on what protections there are for any non-money purchase benefits. As previously stated, there is extensive protection in legislation already for non-money purchase benefits. This includes protections in relation to scheme funding, transfer of benefits and what happens upon wind-up. I reassure noble Lords that schemes that fall within the master trust definition but which offer non-money purchase benefits will still be required to comply with all existing requirements in respect of those benefits. In such cases, the reference to winding-up of the master trust is to be read as a reference to the scheme ceasing to operate in relation to money purchase benefits. So, if authorisation is withdrawn from a master trust which offers mixed benefits because it no longer meets the authorisation criteria, it will be required to stop operating in relation to the money purchase benefits only, but it may still continue to operate in respect of non-money purchase benefits if it is compliant with the relevant requirements for non-money purchase benefits. In most cases this continuity is likely to offer the best outcome for members with non-money purchase benefits in the scheme.

Where a master trust has a triggering event, the impact of that event on the money purchase and non-money purchase benefits may be very different. The protection requirements needed in respect of money purchase benefits for actions such as transfer or wind-up may not be appropriate for non-money purchase benefits. Bringing non-money purchase benefits into the continuity strategy provisions would create more problems than it would solve, creating complications in the interaction between the requirements of the Bill and the requirements of existing legislation or creating possible overlap. For this reason I cannot accept Amendment 26.

I turn now to the question of the appropriate parliamentary procedure for regulations under Clause 8 in relation to financial sustainability. Amendment 17, tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, would require any regulations made under this clause to be subject to the affirmative rather than the negative procedure. It might be helpful if I explain the rationale behind the financial sustainability requirement in Clause 8, which forms part of the authorisation criteria in relation to the money purchase benefits by a master trust, before I discuss the amendment in more detail.

The financial sustainability requirement is intended to address risks in master trusts from which members of other types of workplace pension schemes are protected. For example, providers of group personal pensions are subject to regulation and supervision by the Financial Conduct Authority, and sometimes the Prudential Regulation Authority, which imposes requirements in relation to capital adequacy among other things. The fundamental aim of the financial sustainability requirement is to avoid disruption to members and employers through schemes failing because of inadequate financial planning or resources, and to ensure that if a scheme does fail the cost of transferring members out and winding up the scheme can be met without resort to members' funds.

In order for a master trust to meet the financial sustainability criteria, the regulator must be satisfied that the master trust's business strategy is sound and that it has sufficient resources to meet specified costs. In making its assessment of whether the scheme meets these requirements, the regulator will be required to take account of prescribed matters which will be set out in regulation. We intend to use this regulation-making power, for example, to require the regulator to take into account the nature and terms of a scheme funder's liability in respect of a master trust scheme and the capital held by the funder to absorb any losses that may be incurred. We also anticipate requiring the regulator to take into account the financial resources required to enable the scheme to meet its costs following a triggering event and the extent to which those resources would be protected in the event of the scheme funder's insolvency.

Additionally, the regulations are expected to set out the factors that the regulator will need to consider in assessing whether the business strategy is sound. These

will include assessing the reasonableness of the calculation of the specified costs such as the scheme's set-up, running and continuity costs. The reason for taking a regulation-making power is primarily that the requirements under these regulations will need to be flexible and responsive to an evolving market. They will need to take account of a variety of different structures and funding arrangements which may change over time to ensure that the risks can continue to be mitigated effectively.

It will, of course, always be open to Parliament to debate any regulations made under this power, but requiring all such regulations to be debated as a matter of course, particularly in view of the fact that some of the changes to be made may be relatively minor, does not seem proportionate. It is for these reasons that we think that the negative procedure is appropriate. However, I appreciate the concerns expressed by noble Lords and I will consider the matter further. In particular, I will consider the proposition that the noble Baroness makes elsewhere in her amendments that the first set of regulations should be subject to the affirmative procedure with the negative procedure for amendments thereafter. I hope that I have helped to answer the concerns raised, and I invite the noble Baroness to withdraw her amendment.

Baroness Drake: I thank the noble Lord for his detailed and helpful comments. I hope I have followed them all but I will read *Hansard* at leisure to make sure that I have captured them. In terms of money purchase, I completely accept that one would not want to create a regime that allows arbitrage between a weaker regime and a stronger one on non-money benefits, and I agree that it needs to be proportionate. My main concern is that given that everyone, including the Government, recognises that a key risk with a master trust is the members having to bear the cost of failure, then if there are assets of different types of members in that master trust, it is very important to have clarity about how the risk is shared or borne and the rules that apply. It is helpful that the Minister has confirmed that the Pensions Regulator will not be able to take into account the assets backing non-money purchase benefits when assessing financial resources and capital adequacy because it is the first time that we have had that clearly confirmed. However, I am still a little unclear as to how that will translate into equal levels of confidence when an actual triggering event occurs, and what will be the rigour around clarity as to which asset belongs to each benefit class. If I may presume, it would be helpful to the Committee to have a note or a letter setting out the thinking on that because it might address some of the issues which have certainly been of concern to my noble friend and me.

On the matter of capital adequacy and the amendment to Clause 8, I am anxious not to anticipate what I think will be a larger debate around Amendment 21. I do not want to run the risk of repeating myself, but it is the debate about what happens if a capital adequacy regime fails and the resources are simply not there. I will try not to go there, but the Minister's comments have been helpful. There is still a lack of confidence about how the key concepts will be interpreted under the regime. When the phrase "more flexible" is used, I tend to have an instinctive reaction that it could actually reduce the level of confidence rather than increase it. More flexibility does not always produce good outcomes. If the Minister could consider that regulation should be subject in the first instance to the affirmative procedure rather than the negative one, that would be really helpful because people are struggling. They do not want to hold up the Bill but the capital adequacy regime in Clause 8 is so integral to the linchpin the Government are providing that people are anxious to understand it. That would be a helpful concession if the Minister is able to make it. I am happy to withdraw the amendment.

Amendment 4 withdrawn.

Amendments 5 and 6 not moved.

Clause 1 agreed.

Clause 2 agreed.

4.15 pm

Clause 3: Prohibition on operating a scheme unless authorised

Amendment 7

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

7: Clause 3, page 2, line 33, at end insert "under all of the provisions of Part 1"

Lord McKenzie of Luton: My Lords, in moving Amendment 7 I shall also speak to Amendments 8 and 78. Amendment 7 would require that, for a master trust scheme to be operated, it must be authorised under all the provisions of Part 1. Part 1 covers provisions relating to authorisation, supervision, triggering events, continuity options, pause orders and withdrawal of authorisation—in others words, the totality of the Bill's requirements apart from Part 2, which deals with administration charges.

We have already touched on the reason for the amendment with our reference to the Constitution Committee. In its letter of 11 November to the Minister, the noble Lord, Lord Freud, it drew specific attention to Clause 39, which we just debated, pointing out that it could be used not only to extend the master trust regime to schemes to which it might otherwise not apply, but to prevent a regime applying in whole or in part to schemes to which, according to the terms of the Bill, it would otherwise apply. We would counter this by deleting the authority of Clause 39(1)(b) with Amendment 78. As I said, we would require all the Bill's provisions to apply if someone is to be authorised to operate a master trust.

Clause 39, as we have debated, is an extraordinarily wide power to allot to the Secretary of State, notwithstanding the proposed use of the affirmative resolution procedure. I suggest it is incumbent on the Minister to do much more to justify these powers. In what circumstances will it be envisaged that the provisions would be disapplied? We identified some areas, but

[Lord McKenzie of Luton]
which provisions do the Government have in mind? This gives the opportunity to disapply some or all of the provisions. Some might be taken out of the scheme entirely—AVCs, for example—but how would they be partially disapplied? Further, if the provisions are to be ignored, what authority might there be to make alternative arrangements? What other regulatory procedures would kick in? This legislation is important to protect the savings of millions of people. However, much still needs to be developed.

Amendment 8 would require that a scheme's policies relating to systems and processes be added to the list of matters to be included as part of the application. While we acknowledge that the Secretary of State can, by regulation, add to the list of matters that have to be addressed as part of the application, it seems odd not to include in the Bill information regarding matters about which the Pensions Regulator should be satisfied pre-authorisation.

Amendment 8 would also require the application to set out the extent to which it proposes to adopt the master trust assurance framework. This is a probing amendment. As an at least interim response to the acknowledged poor standards of governance administration, in 2014 the Pensions Regulator and the ICAEW developed a master trust assurance framework to help improve governance for DC schemes. This is a voluntary framework that has been adopted by only a minority of master trust schemes to date—some 11 out of a current total of 84. It involves commissioning an independent reporting accountant to assess the design and operational effectiveness of the control procedures in place. As we know, there are two types of report: type 1 checks the design of a scheme's control procedures; type 2 checks the operational effectiveness over a reporting year.

The point has been made to us that, other things being equal, accreditation will increasingly become a commercial imperative for providers so they can demonstrate that their scheme is well run. We agree with the Government that simply making the assurance framework compulsory is not a full response to the risk that such master trust schemes engender. In contrast to the Bill, it does not cover, for example, the financial stability of the provider and capital adequacy. Although it is not an alternative to the legislation, a question arises as to the future of the framework. This is particularly pertinent, as it appears that the regulations which will enable most of the Bill to come into force are some way off—possibly two years. Can the Minister give us the Government's view on what should happen in the interim? We urge them to set out some analysis of the key areas of consistency between what the Bill requires, in so far as it can be determined, and the assurance framework, and to encourage schemes which have not obtained assurance to do so.

The FCA states that master trusts are expected to obtain independent master trust assurance to demonstrate the meeting of standards of governance and administration that meet the DC code and DC regulatory guidance. Clear indications from the Government are vital now so that schemes under the Pensions Regulator and the ICAEW can know where they stand. I am aware that the noble Lord, Lord Flight, has an amendment still to come. I will withhold my comments on that until we have heard from him. I beg to move.

Lord Flight: My Lords, I support Amendment 8. It is disappointing that reference to the master trust assurance framework was not already in the Bill, particularly given that the accreditation procedure confirms the rigour in the administrative procedures within the master trust. It is right that that should be added.

My Amendment 9 is a probing amendment to ask whether a continuity strategy not be the ongoing responsibility of the trustees rather than something which the regulator determines.

Lord Young of Cookham (Con): My Lords, this group of amendments relates to the nature of the authorisation regime, the requirement to meet the criteria, the information provided in the application and the regulation-making powers to vary the scope of the regime in respect of specified characteristics.

Amendment 7, tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, would modify the central tenet of the authorisation regime: the prohibition on a person operating a master trust scheme unless the scheme is authorised. It would amend Clause 3(1) so that it read:

"A person may not operate a Master Trust scheme unless the scheme is authorised under all of the provisions of Part 1".

The prohibition on operating a master trust scheme has been drafted so that a person may not operate a master trust unless it is authorised and that, to become authorised, the master trust must satisfy the Pensions Regulator that it meets the authorisation criteria. As is set out in the Bill, these are that the persons involved are fit and proper, that the scheme is financially sustainable, that the scheme funder meets certain requirements, that the scheme has sufficient systems and processes to run the scheme and that the scheme has an adequate continuity strategy.

All the criteria must be met in order for the master trust to be authorised. They must continue to be met on an ongoing basis, with the Pensions Regulator having the power to withdraw authorisation if it ceases to be satisfied that all the criteria are met. It is these criteria that are relevant for determining whether a master trust should be authorised. For that reason, I am happy to be able to reassure the noble Lord that all the authorisation criteria must be met for the scheme to be authorised and for the master trust to be allowed to operate. I hope that he will agree that the amendment is not necessary.

Lord McKenzie of Luton: I would be delighted to agree that the amendment was unnecessary, but Clause 39 is about the Secretary of State making regulations,

"applying some or all of the provisions of this Part",

and in particular,

"disapplying some or all of those provisions to Master Trust schemes that have the characteristics set out in the regulations".

This is the point that we are getting at: if you are in, you should be in in respect of all the provisions. What alternative situations are envisaged in which just some of them might apply?

Lord Young of Cookham: I will come to Clause 39 in just a moment but my understanding is that at this stage all the criteria must be met. Clause 5(5), for example, says:

"If the Pensions Regulator is not satisfied that the Master Trust scheme meets the authorisation criteria, it must … refuse to grant the authorisation".

That implies that it must tick all the boxes. I will come to the point that the noble Lord just raised about whether Clause 39 trumps some of the requirements in Clause 5.

In the hope that some in-flight refuelling might arrive on Clause 39 in the meantime, let us turn to Amendment 8. Tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, it would add to the information that the trustees of a master trust scheme seeking authorisation must submit as part of their application. Specifically, it would require that the scheme must submit policies that relate to the systems and processes authorisation requirement of the Bill, and it would require that the scheme submits some form of statement setting out the extent to which it is prepared to adopt the standards set out in the master trust assurance framework.

The first part of the amendment points to the regulations made under Clause 11, which are quite extensive. That clause deals with the requirement for a master trust to have adequate systems and processes. The Bill provides that these regulations may cover certain areas, such as processes for risk management and resource planning, which the Pensions Regulator must take into account in deciding whether the requirement is met. However, the Bill contains no provision for schemes to have policies in relation to the systems and processes requirement. It requires only that the scheme meets those requirements to become authorised. Requiring master trusts to include this information as part of an application creates a new requirement for those running schemes, who will have to develop these policies, but would not of itself ensure that the systems and processes are suitably robust. It is not clear how placing that additional requirement on the industry would increase protection for the members of master trust schemes.

Of course, it is important that the regulator has enough information to be able to assess whether schemes meet the criteria and it is in the interests of any applicant to provide such information to ensure that the regulator can be satisfied that the criteria are met and the application granted. Certain key documents are required under Clause 4, which also contains a regulation-making power to allow the Secretary of State to set out further information to be included in an application. We wish to consult on this matter before deciding what this information should be, and in that context can take on board the point made by the noble Lord, Lord McKenzie. We would also wish to retain appropriate flexibility to update the requirements at a future point to reflect experience of operating the new regime or changes in market practices.

The second piece of information that this amendment would require is a statement setting out the extent to which the scheme is prepared to adopt the standards set out in the master trust assurance framework. This would not be appropriate given the stringent new requirements the Bill introduces for master trust schemes, which go beyond those required to achieve accreditation under the framework. The master trust assurance framework provides a valuable set of principles and standards for good governance but it is and was always designed to be voluntary. I agree with what the noble Lord just said—we should encourage people to sign up.

In addition, as the amendment itself notes, the ownership of this framework rests with the Pensions Regulator and the Institute of Chartered Accountants in England and Wales. It will be for them to determine the future of the framework in the light of the new legislative requirements. It would not be appropriate for the Government to point towards this framework in primary legislation when we do not know what direction it will take or what its future will be. I hope that provides clarity about the relationship between the master trust assurance framework and the authorisation regime, and I trust it explains why the Government do not consider this amendment appropriate.

Amendment 9 is a probing amendment from my noble friend Lord Flight, which would remove the requirement for a master trust scheme to submit a continuity strategy to the Pensions Regulator as part of an application for authorisation. The master trust authorisation regime put forward in the Bill has been designed to protect the interests of scheme members by addressing the specific risks that arise in master trust schemes. The key to the regime is that master trust schemes will not be able to operate unless they have obtained authorisation to do so from the regulator. To do this, the trustees must satisfy the regulator that the scheme meets the authorisation criteria. One of those criteria is that the scheme must have an adequate continuity strategy.

4.30 pm

We will debate the details of that strategy in further detail when we discuss the amendments to the relevant clause, but for the moment, suffice it to say that a continuity strategy is a document that sets out how the interests of the scheme members will be protected if the scheme experiences a triggering event. Of course, the trustees have an obligation towards the members of the scheme but the Bill introduces a new process for the Pensions Regulator to be satisfied that before a master scheme can start trading it has met the necessary standards, which I have just mentioned. A triggering event is an event which could put the scheme's future at risk.

The requirement to submit a continuity strategy is a very important part of the authorisation process. Ensuring that master trusts have from the outset given proper thought to what will happen if things go wrong and have drawn up a strategy is vital to ensure that members are protected. The regulator cannot determine whether the master trust has an adequate strategy if it has not had sight of it. If the strategy was not submitted as part of the application, the regulator could not make a decision on whether or not the scheme should be

[LORD YOUNG OF COOKHAM]
authorised. I hope that explains to my noble friend why I must resist his amendment and I hope he will consider not moving it.

Amendment 78, tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, would prevent the Secretary of State being able to make regulations disapplying some or all of the provisions to master trust schemes that have the characteristics set out in the regulations. This would mean that the application of the regime could not be modified for particular master trusts. As my noble friend Lord Freud said in the debates on the first two groups of amendments, considerable care has been taken in considering the scope of the Bill's provisions to ensure that we address the risks and respond proportionately. Similarly, great care has been taken in crafting the definition of master trust to meet the policy intention. It is, however, necessary to have some flexibility in the application of the regime.

There are some schemes, such as those highlighted earlier by my noble friend Lord Flight, where application of the full regime may not be appropriate. That is why Clause 39(1)(b) makes provision allowing for the disapplication of some or all provisions of the Bill for certain schemes. Again, as my noble friend mentioned in speaking to the first group of amendments, this need for flexibility is driven by the context of the current market. Master trusts are a recent development in a rapidly changing pensions landscape, which continues to evolve. We therefore need some flexibility to be able to respond to these changes. It is for these reasons that we have taken this power. We recognise, however, that such regulation-making powers have the potential to alter the scope of the regime and that noble Lords will wish to debate and approve the making of any such regulations. For this reason, the regulations are subject to the affirmative procedure.

Turning to the specific questions about what other regulatory provisions might kick in if part of Part 1 is disapplied, we would disapply only if we did not think it was proportionate to apply the regime due to other existing protections in place. Finally, I recognise that Clause 39(1)(b) gives the power to disapply all or part of the provisions. We do not currently envisage disapplying part of the regime, although this debate has raised some interesting points around certain schemes and we need to allow for future developments in the industry. I hope that clarifies in part some of the issues raised by the noble Lord, Lord McKenzie, and that he might consider withdrawing his amendment.

Baroness Drake: I listened carefully to what the Minister said. Clause 39(1) has two parts, (a) and (b). Paragraph (a) would apply some of the modified applications in respect of schemes that are currently not master trusts, while paragraph (b) would disapply some of the provisions in respect of schemes that are already recognised as master trusts. There is no question of their identity under Clause 39(1)(b): they are master trusts. The Minister said that the Government's policy was that they would not modify any application on the authorisation criteria for master trusts, or that they would modify those criteria for existing master trusts only if there was an alternative regulation in place somewhere else. Are we therefore talking about a substitution, so that the authorisation criteria for master trusts would be modified only if there was a pre-existing regulation or piece of legislation that met the part that it needed to play? Is that what I understood him to have said?

Lord Young of Cookham: The noble Baroness has accurately summarised what I said. We would use this clause to disapply only if we did not think that it was proportionate to apply the regime due to other existing protections in place.

Lord Kirkwood of Kirkhope: My Lords, perhaps I may make two quick points in response to the Minister's explanation on these amendments, which was on the whole very helpful. The first is a wide point in support of the plea of the noble Lord, Lord Flight, that trustees need to be left with some discretion. I understand the responsibilities of trustees in a defined benefit context and I cannot believe that they are that different in a DC context. There is a body of trust law which they can found on; they have duties and responsibilities flowing from that. I think that a scheme's continuity strategy would be an integral part of what trustees would want to do anyway. They would be derelict in their duty if they were not doing that, so the point made by the noble Lord, Lord Flight, is important. Other amendments which we shall come to later in Committee seem to take trustees for granted and use primary legislation to require them to do things that would interfere with their proper trustee duties. I would like the Minister to reflect on that.

My other point is that although I agree with the case of the noble Lord, Lord McKenzie, on Amendment 8 in preparing to adopt a master trust assurance framework— I do not make this as a cheap point just because I am Scottish—the Pensions Regulator and the Institute of Chartered Accountants in England and Wales may give the best advice in town but there is another part of the United Kingdom with a trust law which is, in some respects, slightly different from that of England and Wales. The Minister is on pretty firm ground in saying that putting this into legislation might startle the horses north of the border. We need to remember that trust law differs in some respects on each side of the border. However, the point made by the noble Lord, Lord McKenzie, was in principle the right approach. I support what he was trying to do but the Minister was also right to say that Amendment 8, as drafted, would not be acceptable—certainly not to me, if nobody else.

Lord Young of Cookham: If I may respond briefly to the first point made by the noble Lord, Lord Kirkwood, we are rolling out auto-enrolment, where employers have to enrol employees into a policy. Very substantial sums of money are in the process of being invested and it is crucial that there should be public confidence in the regime. I accept entirely what he said about the responsibility of trustees but we want to go beyond that and have a statutory framework in which people can have confidence that their master trust, which is getting their money and the employer's money, is robust, has been approved and ticks all the boxes that we have outlined in earlier clauses. This is not to

take away from the responsibilities of trustees but to give an added bonus of public endorsement and confidence in an area of public policy.

Lord McKenzie of Luton: I thank the Minister for his detailed reply to the amendments. In relation to the amendment tabled by the noble Lord, Lord Flight, we, too, would not be able to support it. The continuity strategy is very important. It sets out how members' interests are to be protected if a triggering event occurs. Crucially, it sets out levels of administration charges which apply, and it must be approved by each of the scheme funders. It is a fundamental part. As for ignoring the trustees, the trustees themselves have to start the process to apply for authority, so they are covered in that respect.

I note what the Minister and the noble Lord, Lord Kirkwood, said about the institute's framework. I am not sure I need to declare an interest as a retired member of the institute. It is a long time since I did any meaningful work in that regard.

My noble friend Lady Drake properly probed the Minister's response to misapplying parts of these provisions. I think we want to go away and think long and hard about getting some more information on that. Basically, the Minister is saying that they would not apply this unless they were certain there was a satisfactory alternative in place. That is fine as a matter of principle but we would like to understand a bit better what likely alternative arrangements would be in place for the sorts of disapplications we would seek to engender by this. I beg leave to withdraw the amendment.

Amendment 7 withdrawn.

Clause 3 agreed.

Clause 4: Application for authorisation

Amendments 8 and 9 not moved.

Amendment 10

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

10: Clause 4, page 3, line 15, at end insert—

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

Lord McKenzie of Luton: My Lords, I shall speak also to the other amendments in this group, Amendments 25, 31, 36, 41, 43 and 44. Amendment 10 adds to the matters which must be part of the application for authorisation of a scheme's member engagement strategy. Understanding members' views and needs is essential to designing investment strategies and to the assessment of value for members. It is, or ought to be, an essential component of designing a pension scheme and something which is integral to its creation and continuance. Amendment 25 is a parallel amendment. It requires that the Pensions Regulator should also be satisfied that the scheme has set up a communication strategy defining how it will communicate with members. Indeed, as the DC guide sets out:

"Good member communications, provided at the right time and in the right format, are vital if members are to engage and make decisions that lead to good outcomes in retirement".

The strategy should cover not only style and approach but key content, and the code expects all communications sent to members to be clear, relevant and in plain English. Preferred methods of communication should be checked with members. Some will be more technologically savvy than others. A strategy should also cover the need for ongoing communications throughout membership to help members prepare for choices at retirement.

We know that pensions can seem complex and confusing to some and that the recent growth in schemes has largely been due to auto-enrolment, which has harnessed the power of inertia, the need not to make a choice. But at retirement, or earlier, new flexibilities now offer an increased range of choices which encourage the reverse of inertia, making effective communications more important. The risks of not communicating effectively on pensions are all around us: the growth of scams—albeit there is, belatedly perhaps, some good news due from the Government this week; confusion over the new state pension; and a failure to communicate properly changes to the state pension age, hence the WASPI campaign.

The Pensions Regulator should have the opportunity to review the systems and processes related to communications just as much as the features and functionality of the proposed IT system.

4.45 pm

Amendment 31 would require the holding of annual member meetings. If trustees are to fulfil their duties to act in the best interests of beneficiaries, they must find out what those interests are. Savers should be able to subject decisions made on their behalf to healthy scrutiny and challenge. The trustees or managers of relevant multi-employer schemes must make arrangements to encourage members of the scheme, or their representatives, to make their views on matters relating to the scheme known to the trustees or managers. Master trust schemes would be required to include details of these arrangements in their annual statements.

Some master trusts, such as Legal & General's as I understand it, set out extensive details of the steps they have taken to encourage members to make their views known. Although companies are obliged to hold annual meetings at which the board accounts to shareholders, no such requirement extends to pension schemes, yet the case for such an accountability mechanism is, if anything, stronger. Few investors have their entire life savings in a single company, but many pension savers are reliant on a single fund.

The Bill can address some schemes' lack of transparency and failure to communicate adequately with scheme members by mandating annual meetings. The Pensions Regulator guidance accompanying the new DC code highlights annual member meetings as one way in which schemes can stay close to their members and focus on their perspectives. The precise format should be for individual schemes to decide, based on their circumstances, but some form of face-to-face meeting, held at least once a year, with the option to attend virtually, should be the minimum expected. Meetings would have an advisory function. It is acknowledged that for some schemes, size, in

[LORD MCKENZIE OF LUTON]
terms of the number of members, can present challenges, but we surely have the technology to handle this. In any event, the amendment is not prescriptive as to the form of the meeting.

The other amendments in the group identify specific items where the Bill is weak on keeping members informed. Amendment 36 would require that members as well as employers must be notified by the trustees of the occurrence of a triggering event. The triggering event is potentially very significant, and as it stands, the Bill does not require the members to be informed under option 1 until a transferor scheme has been identified. If option 2 is pursued as a solution, there seems to be no obligation to inform members or indeed employers.

Amendment 41 would require that members and employers should be notified by the trustees where the Pensions Regulator is satisfied that a triggering event has been resolved. Amendment 43 deals with the duty on the trustees to pursue an implementation strategy when it has been approved by the Pensions Regulator. There is a requirement on the trustees to make the strategy "available"—I am not quite sure what that means—to the employers, but no mention of members. The contents of an implementation strategy are dealt with in Clause 27, which states that:

"An implementation strategy is a document setting out how the interests of members of the scheme are to be protected".

However, no engagement is required with those members for the submission or approval of the strategy—unless we are missing something.

On Amendment 44, given the significance of the provisions, we support the affirmative rather than the negative procedure being used for these regulations. I beg to move.

Lord Monks (Lab): My Lords, I rise to support the arguments that have just been expressed so well by my noble friend. In doing so, I declare an interest as a trustee and chairman of the members' committee of NOW: Pensions, which has 1 million members and 20,000 employers signed up. The whole area of member engagement and communications is a major preoccupation for us in a period of what has been very rapid growth—not just of NOW: Pensions but of certain other master trusts.

To find the right way to communicate with 1 million people is an extremely tricky task, but we note with some interest that a range of solutions are now being developed. For example, we note that Legal & General, which I think has about 500,000 people in its trust-based schemes, does hold annual meetings, as the amendment calls for, while others who find that concept difficult are beginning to look more seriously at what they can do in that area.

Finding ways to encourage the member voice is pretty close to the top of most of our agendas. Putting communications at the heart of a master trust, which is by definition a rather sprawling outfit, is very important to try to get it to centre stage. The Government's idea of a dashboard would help. I hope that is not being put on the back burner, because it would be a very useful tool to show people where they are with their pension investments and entitlements. Trustees themselves need to work very hard to explain basic messages about pensions to the people who have signed up. A pension pot, for example, is the members' money now—it is theirs. If that penny really dropped, a lot of people would take rather more interest in the process rather than simply pushing it to one side as they often do.

Getting members to see how their workplace pension sits alongside the new state pension is also important. Members need a wider view than just the workplace scheme to get a picture of their total position when they are coming up to retirement. Where schemes offer a choice of contribution rates, as some do, drawing the availability of higher contribution tiers—and associated higher employer contributions— to members' attention would help to make them aware that these higher contributions in fact mean a greater amount of money from the employer contribution. These kinds of points are in the spirit of helping people to maximise their interest and entitlement in the pensions area. Members should be encouraged to set themselves targets, take ownership of their pot and see if they are getting a good return when they try to work out their pension arrangements for the future.

I accept that these ideas will never be legal requirements—nor should they be; they are more good practice—but they are in the spirit in which every master trust worth its salt should be acting, and they put the members of the trust more at the core of its work. A master trust needs a very good communications strategy. I support all the things that my noble friend Lord McKenzie mentioned, such as online technology and forums. We at NOW: Pensions conduct regional meetings of employers at the moment and are thinking of extending it to members, probably on a first-come, first-served basis as we are not inclined to try to hire Wembley Stadium to run the meetings.

In supporting my noble friend, I urge the Government to take this communications area very seriously and put it not on the edge of their requirements but in the middle, right at the core of the work that is to come.

Lord Stoneham of Droxford (LD): My Lords, I very much welcome the opportunity to support this group of amendments. I have put my name to Amendment 10 but, having heard the speeches so far, I can see no difficulty in supporting the rest of the amendments in the group—and if they come back on Report I would be pleased to sign up to them. The arguments have been strongly made but I will make three specific points about why member engagement is really important.

The first reason is that the risk in contributory pensions is totally with the employee. They are not like direct benefit schemes, where the employer is sharing a lot of the risk; in this type of pension, employees are holding the risk and therefore their engagement and involvement with how their money is being handled is pretty important. If you are introducing a regulatory scheme at this stage, it should be a central point.

My second point is that if you are introducing a regulatory system, you do not want sole reliance on the regulator to make sure that things are running well and that members are satisfied; you want a counterweighting source of evidence and interest from

members themselves to support that regulatory role. That is why this should have the attention of the Government in the Bill.

The third reason is that, as we have already heard, organisations such as Legal & General are already doing that. If that is good practice, the Government should take the opportunity of the Bill to encourage it, take it forward and make it more widespread. The concept of an annual meeting, which Legal & General already accepts as a valuable new forum for communication with members, should be examined and included as an option in the legislation. That would be a way to introduce the discipline of finding out what members want and to make it the fiduciary duty of the trustees to understand what members want from their pension investment. For all those reasons, the Government must take this very seriously. I hope that they will look at this more closely so that when we get to Report, there will be no need to retable the amendments.

Baroness Altmann: First, I support my noble friend's remarks about the master trust assurance framework under the previous amendment, because that framework already exists and there are a number of shortcomings in it, so I could not support including it in the Bill's requirements.

However, in these amendments we are dealing with member engagement—and, indeed, employer engagement, because with a master trust, the employer has in a number of ways handed over responsibility to the trustees. Many of the smallest employers who are currently joining auto-enrolment and using master trust schemes are not fully aware of all the implications and intricacies of pension arrangements. Therefore, it is important to have member engagement and information requirements as part of an authorisation process.

In particular, this might help to address one of the big injustices that your Lordships' House has not yet addressed. Members who earn less than £11,000 a year who join a pension scheme—in particular, a master trust—which happens to use a net pay arrangement, are charged about 25% more for their pension than they would be if their master trust used a different scheme. I have to mention that that is apart from the NOW: Pensions master trust, which has itself made up the extra money that those low earners are unable to receive from tax relief they are due because of the administration of their scheme.

If there were proper member engagement and information that told both members and employers that this particular complicated administration arrangement denies low earners a significant amount of money, perhaps the operation of the schemes would work better in members' interests and the employers themselves would be better informed.

5 pm

Lord Flight: My Lords, I wish to express some concern about Amendment 36. Surely trustees need discretion over the timing of communicating with members in a triggered event period so as not potentially to cause unnecessary scares and worries.

Lord Young of Cookham: I am very grateful to all noble Lords who have taken part in this debate, and I agree with nearly everything that the noble Lords, Lord Monks, Lord McKenzie and Lord Stoneham, and my noble friends have said. We should encourage people to take an interest in their pension pot. Having auto-enrolled them, we should enfranchise them by giving them regular information. I agree with those who suggested that the pressure should come not just from the top down but from the bottom up. These amendments, in their various ways, all address the issue of how trusts should communicate and engage with their members. Then there is an amendment on the procedure for the regulation-making power about the time within which the implementation strategy must be made available.

As I said at Second Reading, I support the principle of member engagement and communication. Master trusts are no exception to any other pension scheme in seeking to keep their beneficiaries in the loop. Having said that, I may have one or two issues with some of the amendments. First, however, I shall deal with the three amendments relating to general communications. The first two relate to proposed member communication and member engagement strategies, and the third would make provision requiring the trustees of an authorised master trust scheme to hold an annual member meeting. I will then pick up on the important matters raised in the last four amendments in this group relating to communications during the triggering event period. Perhaps I may write my noble friend Lady Altmann about the position of those on just £11,000, who may be disadvantaged by the current regime.

Amendment 10 would add to the information that the trustees of a master trust scheme seeking authorisation must submit as part of their application for authorisation. Specifically, it would require the scheme to submit a member engagement strategy. As I said a moment ago, I have a lot of sympathy with the rationale behind this amendment. It is important for schemes to operate in a transparent manner, and for members to be kept informed on key matters, such as the charges that apply to them and the amount of money they have accrued in the scheme, which, as the noble Lord, Lord Monks, said, is their pot.

Indeed, the position of this and previous Governments on this matter is reflected in the various comprehensive statutory requirements that already apply to all schemes, including master trust schemes. These requirements set out the minimum standards for communicating with their members. The Pensions Regulator also publishes guidance for trustees which sets out the further standards it expects quality schemes to meet in relation to communications.

Some of the key requirements include the following. Trustees must provide members with basic information about the pension scheme within two months of their joining. There are also requirements to provide members with updates where this information changes. Trustees must provide most members with a statutory money purchase illustration, which illustrates a member-specific projected pension, and an annual benefit statement that provides details of contributions credited, before deductions, to the member in the

[Lord Young of Cookham]
preceding scheme year. That information must be provided within 12 months of the end of each scheme year.

Trustees must provide other information on request, including: the trustees' annual report, including the scheme's investment report, audited accounts and the auditor's statement; scheme rules or other documents constituting the scheme, including names and addresses of participating employers; a statement of investment principles; and finally, ad hoc benefit statements and transfer values—obviously key pieces of information.

Those are just the statutory measures. The Pensions Regulator publishes detailed guidance for trustees about the standards it expects quality schemes to meet to ensure they communicate effectively and transparently with their members. Details of that can be found on its website.

The Bill does not seek to stipulate how the trustees of a master trust should run an excellent scheme, or to replicate other general requirements that apply to schemes more broadly. It seeks to address the key risks that arise in relation to master trust schemes to ensure that the interests of scheme members are protected. The Government's view is that, provided that the communication requirements which already apply to all schemes are met, the trustees of an authorised scheme should have the ability to exercise their discretion in considering the most effective forms of member engagement without being unduly constrained by an additional prescriptive statutory requirement. In this debate we have heard many examples of good practice in that area. It is also worth noting that the amendment does not define the term "member engagement strategy" so, as tabled, it is not entirely clear what this would constitute. I hope that explains that, while I agree with the principles behind the amendment, I am not of the view that it should form part of the Bill.

I shall now touch briefly on Amendment 25, as tabled by the noble Lords, Lord McKenzie and Lord Monks, and the noble Baroness, Lady Drake. This amendment is very similar to the one that I have just touched on, although the precise wording is:

"The scheme must set out a communication strategy to define how it will communicate with members",

and the amendment is inserted into a different clause. The effect of the amendment would be very similar, in that the content of such a strategy would become a matter the regulator must consider when determining whether it is satisfied that the scheme meets the authorisation criteria relating to the adequacy of systems and processes. As with the amendment we have just discussed, the effect would be that the trustees of a scheme must prepare such a strategy, although again its proposed content is not entirely clear. For this reason, the points that I would raise regarding this amendment would mirror the points I set out a moment ago, which I shall not repeat. I hope that argument might be accepted.

Amendment 31 would require the trustees of an authorised master trust scheme to hold an annual meeting which would be open to all members of the scheme and made accessible online. While I have set out my views on the more general matter of member communications, there are specific implications raised by this amendment which need further consideration. It is not clear that requiring trustees to hold an annual member meeting is necessary, nor that such a measure would significantly improve communications between the scheme and its members. Some master trust schemes have hundreds of thousands of members—indeed, I think we heard a higher figure from the noble Lord, Lord Monks. It is not clear that there is demand among this membership for such a meeting, nor is it clear what the financial and administrative implications of hosting such a meeting would be for master trust schemes.

According to the amendment, the meeting would need to be capable of hosting every scheme member. While a great many would in theory be able to connect to the meeting online, it seems likely that, in a scheme with hundreds of thousands of members, a significant number might need or want to attend in person. The cost of hosting a meeting capable of accommodating that number of attendees, in person and online, has not been set out, but it could be significant and might not be in the best interests of scheme members, especially if, in the event, demand turned out to be low. That is not to say that schemes should not hold such a meeting but, as I have said, the Government's view is that, provided that the communication requirements which already apply to all schemes are met, the trustees of an authorised scheme should have the ability to exercise their discretion in considering the most effective forms of member engagement without being unduly constrained by additional prescriptive statutory requirements.

I turn to the amendments related to the triggering events—and here the balance is crucial. My noble friend Lord Flight touched on that issue in his intervention. Amendment 36 requires the trustees of master trust to notify members when it has a triggering event. Amendment 41 requires the trustees to notify the employers and members in the master trust that the Pensions Regulator is satisfied that the triggering event has been resolved. Amendment 43 requires the implementation strategy to be made available to members, in addition to employers.

The principles that we have applied to the policy and the Bill measures about communicating with members during a triggering event period are to consider, first, the current level of member engagement and understanding; secondly, the potential effect of the provision of certain types of information, which, again, my noble friend touched on; and thirdly, the level of protection afforded to provide demand-side pressure, in the absence of the provision of information or assumed member engagement. It is the consideration of these principles that leaves me with some doubt that the amendments as proposed are appropriate.

Amendment 36, tabled by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Drake, would require the trustees of a master trust that had had a triggering event to notify the members of that scheme that this event had occurred, and other such matters as will be set out in regulations under this clause. Triggering events are events that pose a risk to the scheme and could lead to it failing. These events could put members' pension pots in the scheme at

risk. The scheme's trustees must notify the participating employers that the event has occurred, and such other information as will be set out in regulations.

A master trust that has had a triggering event poses an increased risk to the members' savings in the scheme. That is why additional measures and protections are required at this point—this is, indeed, what the Bill does. These aim either to resolve the issue the scheme has had and, with the regulator's approval, enable it to continue, or, where this is not appropriate and the scheme is going to wind up, make sure that the members are transferred out. Following a triggering event, additional measures are in place to protect members' pension pots and enable the Pensions Regulator to have more involvement with these schemes. The regulator will have additional oversight over schemes that have experienced a triggering event and extra controls that it can use. For instance, where the regulator was very concerned about a master trust, these controls include the regulator being able to direct the scheme not to take on any new members. This might be where the regulator considered that there was an immediate risk to the interests of the members of the scheme and that it was necessary to protect the interests of the generality of the members. This is covered by Clause 31.

This amendment would require the trustees to notify the members of the same information that they notify employers of. We specifically did not require schemes to notify members at this stage—again, for the reason that my noble friend gave—as we did not want to worry members unnecessarily and at a point when definitive information about the next steps may not yet be available. This is because informing members could risk them opting out of the scheme and stopping to save in a pension. We have instead provided additional protections during this period. Many members will have joined because they were automatically enrolled into the scheme by their employer. It will not have been an active decision on their part. Also, many members in this situation tend not to actively engage with the scheme of which they are a member. We would hope that, in many cases, the triggering event the scheme has experienced will be resolved and the scheme will simply continue, so in that case the members should not see any disruption to their pension saving, and we would not want them to be unduly alarmed or confused.

If members thought that their scheme was going to collapse and could not be given information about the next steps to maintain and protect their pension savings, they might opt out of saving in their current scheme, as I just said, and even lose confidence in pensions and not continue to save in any pension at all. Where the scheme is going to have to wind up, members would be informed ahead of this in accordance with requirements under Clause 24 and the regulations made under it. If the scheme is going to pursue continuity option 1, members will be informed of the situation well ahead of anything directly impacting them and given information about options.

The aim behind the clauses in this section of the Bill is that, where a master trust experiences a triggering event, members of the scheme continue to save in a pension. To this end, we do not think that members should be informed at the stage set out in the amendment because of the adverse implications it could have and the absence of any practical advantage to the members that would flow from them being informed at such an early stage. However, we recognise how important it is that members are informed well ahead of something happening that directly impacts on them and may disrupt their pension saving, and I think the Bill gets the right balance.

Amendment 41 seeks to make the trustees notify the employers and members in the master trust that the Pensions Regulator is satisfied that the triggering event has been resolved. This situation is where a master trust has experienced a triggering event but has resolved it, and the regulator is so satisfied. The aim behind Clause 25 is that, where trustees try to resolve the triggering event, they have the opportunity to do so, so the scheme can continue and members continue to save with as little disruption as possible. Amendment 41 seeks to make the trustees notify the employers and members in the master trust that the Pensions Regulator is satisfied that the triggering event has been resolved, where the regulator has notified the trustees to this effect. The Bill already provides employers with sufficient sight of this under Clause 22. Once the implementation strategy is approved, the trustees have to pursue the continuity option identified in the strategy and take the necessary steps. If something dramatic happened that caused the choice of continuity option to be changed or if the implementation strategy was required to be altered for some other reason, the trustees would have to seek the regulator's approval. In principle, we agree with the objective of this amendment. However, we consider that we achieve the same outcome as intended but through a different route.

I am conscious that this group of amendments is taking a long time.

5.15 pm

Amendment 43 would require the trustees of a master trust that had had an implementation strategy approved by the Pensions Regulator to make that strategy available to the members of the scheme. Clause 28 requires the trustees to pursue the continuity option that they have set out in their implementation strategy once the regulator has approved the strategy, and it requires the trustees to undertake the steps they have identified as being needed in that strategy. Under Clause 28(2), the trustees have to make the strategy available to employers. Many master trusts have a large number of employers and members participating in the scheme, particularly when compared with more traditional types of occupational schemes. The high numbers using a single scheme are likely to make the closure of a master trust scheme more complex and long-winded. Also, employers tend to have less involvement with and oversight of a master trust than they would of a scheme they had set up and run themselves. That is also true of members, especially where they have been automatically enrolled into the scheme by their employer. This means that if a scheme experiences a triggering event, it needs to have an adequate plan for dealing with this, and the regulator needs to have closer supervision of the scheme.

[Lord Young of Cookham]

The detailed strategy needs to set out the areas that need to be tackled and what needs to be done in each area. This should make it easier and more likely that the regulator will be able to hold the trustees to the strategy and monitor it effectively. The implementation strategy must set out which continuity option the trustees are pursuing and how they will do this. Without going into detail, I think that we have the balance right in notifying employers and employees about what is going on.

Amendment 44 would require the regulations in relation to the time period within which a scheme must make its implementation strategy available to the employers to be subject to the affirmative, rather than the negative, resolution procedure. I refer to what my noble friend said a few moments ago about the balance between the affirmative and negative procedures. We recognise the strong feeling that has been aroused. We have read the reports of the Constitution Committee and the Regulatory Reform Committee. We want to reflect on whether we have the balance right and come back at a later stage.

I apologise for the length of that contribution. I hope that I have explained why the Government are of the view that, while it is important for all pension schemes to communicate effectively with their members, these specific amendments would not be appropriate for inclusion in the Bill, and I hope that the noble Lord will consider withdrawing his amendment.

Lord McKenzie of Luton: My Lords, I start by thanking all noble Lords who have spoken in this debate, most of whom have supported the amendments. My noble friend Lord Monks made reference to good practice for master trusts. He also asked about the pensions dashboard, but I do not know whether we have any further information on that. The noble Lord, Lord Stoneham, set down the three key reasons why he supported member engagement: the risk lies with the employee; there should not be sole reliance on the regulator; and some schemes, such as L&G, are already doing it. The noble Baroness, Lady Altmann, raised an interesting point, probably relating to an earlier debate, about the big injustice for low earners because of how the tax system works. That is something that we ought to return to before the Bill leaves this House, and we should be grateful for that intervention.

I thank the Minister for a very full reply. I would certainly like to go away and read the record on what he referred to as the balance that is struck in these provisions. That is an important point. I was slightly concerned about what he said in relation to Amendment 36. The implication seemed to be that you had to protect scheme members from this knowledge because they might go and do something adverse. There was a smack of paternalism there, but let me read the provisions in the round because we may well wish to return to that. I am certainly grateful for the offer to reflect on Amendment 44 and the nature of the process that will apply to the resolution. Having said all that, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11

Moved by ***Lord Flight***

11: Clause 4, page 3, line 25, leave out first "the" and insert "any"

Lord Flight: My Lords, this is a very simple amendment. The use of the word "the" assumes that a fee will apply and that, effectively, this legislation is laying that down. Should not it be best left to the Secretary of State or the regulator to determine whether or not a fee will apply? Hence, I suggest that "any" is substituted for "the".

Lord McKenzie of Luton: My Lords, we have Amendments 12 and 82 in this group. We are happy to support the amendment of the noble Lord, Lord Flight, on this occasion.

Amendment 12 requires a new clause to be inserted in the Bill requiring the Secretary of State to report to Parliament on the sufficiency of resources available to the Pensions Regulator for the purposes of the Bill. I think we can anticipate the specifics of the reply to that formulation but I stress that this is about trying to get something on the record today about resources, rather than it necessarily being dealt with on the basis of a clause in the Bill. We know from the impact assessment that there will be additional costs to business from funding the Pensions Regulator and an ongoing levy charge. However, like so much of this Bill, we have no further detail.

The Pensions Regulator has a very significant role in the new era of master trusts and it is vital that the regulator is resourced to play its part in full. When fully commenced, the Pensions Regulator will be responsible for applications for authorisation; judgments about fit and proper persons; decisions as to whether a scheme is financially sustainable, with all the calculations that that entails; a sound business strategy with sufficient financial resources; taking a view on whether the systems and processes used in running the scheme are sufficient to ensure that it is run effectively; and determining whether a master trust has an adequate continuity strategy. On an ongoing basis, the Pensions Regulator is the recipient of supervisory returns and scheme accounts, and must deal with significant events—whatever that may be, and we are going to come on to that—issue penalty notices where appropriate and withdraw authorisation where criteria are no longer met. Further, the Pensions Regulator has an important role as a consequence of a triggering event and winding-up. Not all these responsibilities will bite immediately. It looks as though it could be two years before the commencement of all the Bill takes effect. However, there are responsibilities before that under the transitional provisions of Schedule 2.

Currently, of course, the Pensions Regulator has a role in relation to master trusts, but it is more limited than that provided for in this legislation. The extent of resources required depends upon the volume of master trusts, now and in the future. Although aggregate amounts are expected to increase—that is both members and investments, largely through auto-enrolment—there is the prospect at least of some providers exiting the market. Clearly the workload of the Pensions Regulator

is likely to be front-end loaded as the authorisation of existing master trusts is completed and the role becomes more one of supervision. Notwithstanding that, there is much detail still to be settled and we are entitled to seek comfort on the capability of the Pensions Regulator to play what is a central role in the new regime.

On funding, is it proposed that fees and levies will provide the totality of additional resources needed to meet the requirements of the Bill? What assessment has been made of any recruitment needs given the expanded role? In particular, what, if any, changes are considered necessary to the skills set of the Pensions Regulator employees and what planning is under way to meet this? This is inevitably a probing amendment, but one to focus on the operational position of the Pensions Regulator given the important additional tasks of the organisation, which we support, based on the Bill.

Amendment 82 reinforces the Government's commitment in the impact assessment dated October 2016. This recites that the level of uncertainty currently is too great to provide a meaningful estimate of the net cost to business of the introduction of the authorisation and supervision regime. However, it promises a full assessment at the secondary legislation stage. Our amendment causes this to be before triggering the bringing into force of the main provisions of the Bill. We seek some further clarification on timing, as presumably all the secondary legislation will not arrive at the same time. Are we going to get the impact assessment piecemeal? The purpose of these amendments is to make sure that we get the information about the overall impact of these provisions.

Lord Flight: My Lords, should Amendment 12 be in the Act? Generally the Government and the Secretary of State have responsibility to see that something like TPR is funded and it is not solely a master trust issue. I question whether this should be in the Bill.

Lord Freud: My Lords, these amendments all concern the resources, financial or otherwise, which will be required to ensure that the Pensions Regulator can implement and operate the master trust authorisation regime.

Amendment 11, tabled by my noble friend Lord Flight, would change the wording of Clause 4 so that subsection (5)(b) reads:

"The Secretary of State may make regulations setting out … any application fee payable to the Pensions Regulator",

instead of "the" application fee.

The current provision in the Bill does not require the Secretary of State to set an application fee but it is important for the Government to be clear to the industry about their intentions now—and the Government intend to make regulations that specify an application fee. It is also important for the Secretary of State to have the ability to change the application fee in the future. That is one reason for specifying this fee in regulations. The master trust industry is developing, and will continue to do so, as it adapts to the new requirements of this regime. As the industry changes, it is entirely feasible that the cost to the regulator of assessing applications for authorisation may change too.

The fee serves two key purposes. First, it ensures that the Pensions Regulator can recover the costs of processing applications from master trust authorisation without indirectly placing those costs on the wider pensions community it regulates. Without an authorisation fee it would have to recover these costs through the funding provided by the general levy, and this would not be fair given that a large number of the schemes which pay into this levy are not master trust schemes. Secondly, the fee ensures that schemes seeking to become authorised submit carefully considered applications by acting as a deterrent to submitting multiple applications.

As I hope I have explained, it is important to make provisions for regulations to specify an application fee and that the industry is clear that the Government intend to use this power. The Bill as it stands achieves this intent.

Both Amendments 12 and 82 require that a report on the subject of the Pensions Regulator's resources is laid before the Houses of Parliament before the provisions within Part 1 of the Bill are commenced. Amendment 82 would additionally require that Parliament is presented with a report about the impacts of the master trust authorisation regime. The additional report required by Amendment 82 is described as,

"a comprehensive assessment of the impact of Part 1".

The other report is,

"a report demonstrating that sufficient resources are available to the Pensions Regulator to carry out the requirements on the Regulator pursuant to",

this Act. The focus of Amendment 12 is very similar, but it requires that the resources report should address the resources required to conduct the regulator's functions under Clause 5.

5.30 pm

I shall set out my thoughts on the matter of an impact assessment before putting forward my views on resourcing. The Government published a formal impact assessment alongside this Bill. This impact assessment was rated green and therefore fit for purpose by the Regulatory Policy Committee prior to its publication. We have already committed to submitting an updated impact assessment at the secondary legislation stage. This commitment can be found in the summary of the impact assessment published with the Bill. It is for this reason that we are satisfied that the impact of regulations will be properly considered going forward. I do not consider it necessary or appropriate to include further specific provision within the Bill which requires a report setting out the impacts to be produced.

I turn to the resources available to the Pensions Regulator. As an arm's-length body, the regulator receives funding from the Department for Work and Pensions and the budget it is allocated follows an annual business planning review conducted by the regulator with input from the department. In brief, the way the review works is as follows. The regulator submits a draft business plan to the department, which includes an assessment of its priorities for the coming year and an estimate of the funding it will require to deliver its statutory functions. The department reviews this plan before agreeing the regulator's priorities and funding for the coming year. Through this mechanism,

[LORD FREUD]
the department always ensures that the regulator has the funding it requires to deliver its statutory obligations in any given year. In the interests of transparency, the agreed business plan is always published on the regulator's website. Furthermore, the regulator's annual report and accounts are laid before Parliament. The annual report and accounts outline how the regulator has performed and include a financial review. The process for ensuring that the regulator has the resources it requires to deliver the master trust authorisation regime will form part of the annual business planning process in the normal way. In addition, the Government recognise that there is likely to be a peak in activity when existing master trust schemes which choose to seek authorisation submit their applications.

I would like to conclude by saying that I absolutely agree with the points that noble Lords are making through these proposed amendments. The regulator must have the resources it requires to ensure that the authorisation regime is successful and the Government must ensure that the impacts of the regime are considered with appropriate scrutiny. With that assurance, I hope that my noble friend will see fit to withdraw his amendment.

Lord McKenzie of Luton: My Lords, I thank the Minister for his response. I should say to the noble Lord, Lord Flight, that I accept that having this in the Bill in those terms would not be appropriate. The purpose of the amendment is to try to have a debate around the issue and thus have something on the record. I accept entirely the proposition around annual business planning and the assurance given that there is a need and recognition that the Pensions Regulator must be properly resourced to carry out these important functions.

Although there is an impact assessment, it is quite thin. It takes up lots of paper but it is thin in terms of the numbers that were on some of the schedules. The Minister has reiterated what was in that report about how there will be a further impact assessment at the secondary legislation stage. What precisely does that mean? Is it that when the regulations are in place and have been agreed there will be a comprehensive review, or that it is going be done piecemeal as each of the components of these regulations is put in place? If we tot up the number of regulations in the Bill—I have not done it—I am sure that they will run into the several tens. How is that actually going to work and when would the secondary legislation be laid for these purposes? Will there be an aggregate impact assessment at that stage?

Lord Freud: One of the things I have committed to do is to go back and think about how we make these regulations in the context of the noble Lord's own suggestion of perhaps looking at the balance between the affirmative and negative procedures. In that context, the exact way in which the Government decide to present the regulations would clearly change. Regulations made under the negative procedure tend to be less of a set piece, while affirmative regulations do tend to be more of a set piece for obvious reasons. The answer to the noble Lord's question will depend on our reflections on what we do with his proposition.

Lord McKenzie of Luton: I am grateful to the noble Lord.

Lord Flight: My Lords, I am interested to note that my amendment has resulted in a clear statement by the Government that a fee will be charged and that it will be provided for in the Bill. I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Clause 4 agreed.

Clause 5 agreed.

Amendment 12 not moved.

Clause 6 agreed.

House resumed.

Independent Inquiry into Child Sexual Abuse

Statement

5.36 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House I shall now repeat in the form of a Statement the Answer to an Urgent Question delivered by my honourable friend Sarah Newton MP, the Minister for Vulnerability, Safeguarding and Countering Extremism. The Statement is as follows:

"The inquiry was set up to look at the extent to which institutions in England and Wales failed to protect children from sexual abuse. We know the terrible impact that abuse has on survivors, sometimes for many years. As the House knows, following the resignation of the previous chair, my right honourable friend the Home Secretary appointed as chair Professor Alexis Jay. She has a distinguished career in social work and a long-standing dedication to child protection. She led the independent inquiry into child sexual exploitation in Rotherham where she scrutinised the work of social workers and proved her capability to uncover failings across institutions and professions. She is the right person to take this work forward.

Taking the work forward is vital for creating a sense of certainty for victims and survivors. The inquiry has set up 13 strands of investigation and made 250 formal requests for information from over 120 institutions, with 164,000 documents now having been submitted. It has referred roughly 80 cases a month to the police. It has rolled out the Truth Project, providing survivors with the opportunity to tell the inquiry what has happened to them, and more than 500 people have come forward so far.

The inquiry has adequate resources to undertake its work and we will support the inquiry with what it reasonably needs. The inquiry remains independent, which means that it is not part of government and is not run by a government department. Professor Jay is mindful of both the scale of the task and the need to move forward at a pace. That is why she instigated an internal review of the inquiry's approach to its investigations, exploring new ways to deliver its

investigative work while remaining faithful to its terms of reference. She has made it clear that if any changes are proposed, the views of those affected by them will be sought. We expect the outcome of this review soon.

It is crucial that we now give the inquiry the space and the support it needs to get on with its job, getting to the truth for victims and survivors. I urge everyone in the House to do just that".

5.38 pm

Lord Rosser (Lab): My Lords, I thank the Minister for repeating the Answer to the Urgent Question asked in the other place. The independent inquiry into child sexual abuse may be in danger of turning into a soap opera. Unless it has changed its mind within the last few hours, the Shirley Oaks Survivors Association, which I understand represents some 600 victims, seems to have lost all confidence in the inquiry and appears to have done its own version of Brexit.

I have four relatively brief questions for the Minister. First, is it the case that the current fourth government-appointed chair of the inquiry has not, as claimed, met or contacted the Shirley Oaks Survivors Association since her appointment? Secondly, does the Home Secretary intend to meet the survivors association to find out at first hand the reasons for its apparent declared lack of confidence in the inquiry and its chair, with a view to seeing if any of those reasons can be addressed and the association persuaded to carry on participating fully in the inquiry proceedings? Thirdly, what powers does the inquiry have to require witnesses to attend, or would the thought of an inquiry into child abuse requiring an association representing 600 victims to appear before it simply, in the Government's view, risk signalling the end of the inquiry as a credible channel for investigating child sexual abuse? Finally, does the Home Secretary intend to review the remit of the inquiry?

Baroness Williams of Trafford: My Lords, the Home Secretary has no plans to review the remit of the inquiry, which was originally set out with the support of the survivors. The chairman has also stated that she is happy with the inquiry's remit and has no plans to change it. However, a review will be published in due course on the operation of the inquiry. That was laid out the last time I answered a question on this subject.

On the Home Secretary meeting the chair of the inquiry to discuss the way forward, or indeed the survivors, this is an independent inquiry. I cannot stress that strongly enough. It is for the chair, together with the panel and the survivors' group, to work through the inquiry in the way it sees fit.

It is indeed sad that Shirley Oaks has chosen to step outside the inquiry, but the door is always open for it to return. I hope it does in due course. On the chair meeting the survivors, I assume that that either has happened or will happen in due course—I assume it has happened already. The survivors are at the heart of the inquiry; it is important that the chair not just listens to the panel, but hears from the survivors themselves.

Lord Paddick (LD): My Lords, changes to the inquiry—four chairs so far, another review and another lead counsel—do not just leave survivors disappointed, as the Minister in the other place said this afternoon; they are retraumatising for survivors. Do the Government have confidence that all those involved are being appropriately consulted about the future of the inquiry? These may be operational decisions, but Ministers must satisfy themselves that this inquiry is being properly run. With 13 strands, 250 lines of inquiry, 164,000 documents, 80 cases a month being referred to the police and 500 victims having come forward so far, is the Minister confident that the inquiry and the police have sufficient resources to deal adequately with these issues in a reasonable timescale?

Baroness Williams of Trafford: My Lords, all reasonable resources are being provided for the inquiry's purposes. I underline the point that lack of resource is not an issue. Resources are there to meet the needs of the inquiry. Last year it underspent slightly. I do not think there is any question that there is not sufficient resource in money and manpower.

The Government have confidence in the chairman, having appointed her, but I must underline again that this is an independent inquiry. It is not for the Government to interfere in the inquiry and we have every confidence that it will proceed with pace and clarity, as the chair outlined herself.

Lord Finkelstein (Con): I thank the Minister for the Statement. It is obviously massively premature to suggest the chairman of the inquiry stand down, but I have questions about the remit. Given that it took 10 years or more for the Savile inquiry to inquire into a single institution on a single afternoon, how long does the Minister estimate it will take the inquiry to inquire into every institution in the country over 50 years?

Baroness Williams of Trafford: My noble friend asks a perfectly reasonable question. We are not holding the inquiry to a timescale, but the chair has indicated that by 2020 she should have concluded a large element of her work. We have absolute confidence in the chairman. She was appointed in view of the fact she had led such a successful inquiry into some of the terrible things that happened in Rotherham.

Lord McConnell of Glenscorrodale (Lab): My Lords, my Government in Scotland appointed Professor Jay to head up our social work inspectorate in 2006. She is an outstanding individual and, I believe, not only the best appointment to this position but one who should have been appointed earlier, given her track record. I hope we will give her every support. That said, I ask a question I have asked before about the links between this inquiry and the similarly stuttering inquiry in Scotland into survivors of child sexual abuse. Have those links been properly set up, and will information be exchanged between the two inquiries to ensure that the whole of the United Kingdom is covered accurately?

Baroness Williams of Trafford: On the noble Lord's second point, the entire point of the inquiry is that it is a full and proper inquiry into what happened in the past, both in Scotland and in England and Wales. I am

[Baroness Williams of Trafford]
sure there will be sharing of information across the piece. I am pleased he mentioned Professor Jay because she has shown in her past work into Rotherham what an outstanding chairman she is and how she got to the heart of what was a very difficult, complex issue. I am pleased to hear the noble Lord make that point. The Government also have full confidence in her.

Lord Elystan-Morgan (CB): My Lords, will the review direct itself to seek to set a target no later than five years from now for the publication of the final report? Failure to do this may well place a very great strain on human memory. Witnesses will die; others will fail to give coherent evidence.

Baroness Williams of Trafford: The noble Lord makes a very good point. On the current chairman's intentions, she has said she will operate with pace but also with clarity. The longer time goes on, the harder these things become. We will not press the inquiry to a timetable, but the chairman has laid out quite clearly that she intends to do it with clarity and pace.

Lord Faulks (Con): My Lords, I wonder whether my noble friend will appreciate a suggestion pursuant to the internal review as to how the inquiry might be somewhat more focused. Rather than deciding who abused who when, which would involve a trial of some sort, would it not be better to focus on the complaints system so that there is an examination of when a complaint was made, why it was not heard, and, if a complaint was not made, why it was not made so that we can learn about the systems that will protect children in the future? The ambit of that would be much smaller and it should be possible to report much more closely. In asking that question, I declare an interest as being instructed on behalf of the estate of Lord Janner.

Baroness Williams of Trafford: My noble friend demonstrates that there are a number of views on how the inquiry should be conducted and just what focus it should take. I totally bow to his rich experience in this area, but I come back to the point that the Government are very clear that this is an independent inquiry. Therefore, the way it is conducted is entirely a matter for the inquiry itself.

Pension Schemes Bill [HL]

Committee (1st Day) (Continued)

5.50 pm

Clause 7: Fit and proper persons requirement

Amendment 13

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

13: Clause 7, page 4, leave out line 39

Lord McKenzie of Luton (Lab): My Lords, I shall speak also to Amendments 14 and 15. I shall be brief. Clause 7 deals with the fit and proper persons regime and sets out which persons the Pensions Regulator must assess. It provides that regulation should set out matters which must be taken into account.

Clause 7(2)(e) identifies as one of the persons who must be assessed as fit and proper,

"a person who (alone or with others) has power to vary the scheme (where the scheme is not established under a trust)".

By way of a probe, Amendment 13 would delete the reference to a scheme not established under trust. We ask the Government to spell out the type of arrangement they envisage would not be established under a trust and, where responsibilities are placed on trustees in the Bill—for example, in Clauses 14 and 15—by whom they would be discharged. Amendment 14 would ensure that the Pensions Regulator was subject to an ongoing requirement to ensure that specified persons remained fit and proper. Can the Minister advise whether and how such a requirement is envisaged to be met? Amendment 15 would change the nature of the resolution from negative to affirmative. I trust that the amendments will receive the same favourable response as those raised previously. I beg to move.

Lord Young of Cookham (Con): My Lords, I am grateful to the noble Lord, Lord McKenzie, for his introduction to the amendments. I hope to be able to respond almost as briefly—and as eloquently.

Amendment 13 would amend the description of one of the people whom the Pensions Regulator must assess as fit and proper. It would change the description of a person who,

"(alone or with others) has power to vary the scheme (where the scheme is not established under a trust)",

by removing the words,

"where the scheme is not established under a trust".

The preceding paragraph refers to a person who has the power to vary the terms of the trust under which the scheme is established, and the paragraph in question here is a counterparty to that provision. The two paragraphs work together to ensure that any person who has the power to vary the terms of the trust or the scheme is subject to the fit and proper person test. Clause 7(2)(d) describes the persons who have this function under a trust-based scheme and Clause 7(2)(e) describes an equivalent for schemes which are not set up under trust. Clause 7(2)(e) is therefore specifically to cater for those relatively rare exceptions where a master trust may be set up outside the trust-based structure and to ensure that we do not create an avoidance loop hole.

Incidentally, we have maintained the term "master trust", as that is how such schemes are known in the industry, even where they may be set up outside the trust-based structure. Clause 1 defines what the term means for the purpose of this part of the Bill, to ensure that there is clarity about who is in scope of the new regime, but it is not necessarily the case that it would be possible only ever to set up the sort of scheme captured under trust. It would be relatively rare, but we need to cater for such circumstances. We would want the regime to bite where schemes were not set up under trust, and this is one place in the Bill where something separate is needed to provide such cover. The two paragraphs provide that anyone who has power to vary the terms of the master trust must be subject to the fit and proper test.

I welcome the sentiment expressed in Amendment 14, which would require the regulator to ensure that the

authorisation criteria had been met continuously and that it should not be a "once and done" affair. I agree that it would not be sufficient to require the scheme to satisfy the regulator on these matters only once at the point of application for authorisation. The intent of the Bill is that the standards must be maintained continuously.

Clauses 3, 4 and 5 together ensure that a scheme cannot operate unless it is authorised—with various modifications for existing schemes in Schedule 2, which we will come to later—and provide for a clear application process and decision by the regulator. Clause 19 also allows for the Pensions Regulator to withdraw that authorisation at a point at which it stops being satisfied that the criteria are met. To be clear: this does not mean that the scheme will be asked to reapply for authorisation regularly and that, if it fails, this is the only way to change its status. Nor does it mean that, once the test is passed, the scheme will always remain authorised; the criteria must continue to be met. It does mean that the regulator can withdraw authorisation if it is no longer satisfied that the criteria are met. The scheme must be able to show to the regulator's satisfaction that it is meeting the criteria on an ongoing basis.

Lord Hutton of Furness (Lab): I am grateful to the Minister for his comments, which have been very clear, but where I am struggling with his account of this part of the Bill is his saying that the regulator has almost an implied power to review, for example, whether a newly appointed trustee is a fit and proper person. There is nowhere in the Bill so far as I can see where that implied power is expressed. It is always better for such matters to be dealt with by giving the regulator an express power than to rely on some clever interpretation of words to get to the point where it is implied the regulator has a power to review when all it has is, in the words of the Minister, the power to withdraw authorisation, which is altogether different.

Lord Young of Cookham: I take the point that the noble Lord has just made. I hope to be able to reassure him that other provisions in the Bill will satisfy him that the regulator will have the necessary information to withdraw authorisation if something happens that requires it. I will come to that shortly.

As a public body, the regulator must exercise its general functions reasonably and consistently with its duty to be satisfied that the scheme meets, and therefore continues to meet, the authorisation criteria. With respect, a specific regulation-making power to require the regulator to review fitness and propriety is not necessary.

I turn to other clauses, which I hope shed some light on the issue raised by the noble Lord, Lord Hutton. Clause 14, requiring the submission of annual accounts, Clause 15, requiring the submission of a supervisory return and, crucially, Clause 16, which creates a duty to notify the regulator of significant events, all serve to ensure that the Pensions Regulator can take an ongoing view of risk in relation to whether it remains satisfied that the scheme continues to meet the criteria.

Additionally, the regulator also has its information-gathering powers to bring to bear, so it can ask schemes for information to assist in assessing whether it remains satisfied that a scheme continues to meet the criteria and inquire for more information about reported events or information provided. The duty to notify the regulator of significant events, which is provided for in Clause 16, will be supplemented by regulations which specify the events which must be reported. Although we intend to consult on the regulations, our current thinking is that such events will include a change in status of anyone subject to a fit and proper test and any change in the personnel who are subject to the fit and proper test. The use of the significant events regime in Clause 16 to achieve this end is not set out in express terms in the Bill because of the detail which will follow in regulations, but I hope that my outlining of the intent above has helped to clarify this. I have no doubt that later we will return to Clause 16 for further debate.

Amendment 15 would change the regulation-making procedure in Clause 7 from the negative procedure to the affirmative procedure. I note that in an otherwise critical report, the Delegated Powers Committee acknowledged that this clause was one where the negative procedure might be appropriate. None the less, I refer to what my noble friend said in earlier debates about wanting to stand back and look at the totality of procedures, affirmative and negative, and then come to a conclusion at the end on whether we strike the right balance. On that basis, I hope the amendment might be withdrawn.

6 pm

Lord McKenzie of Luton: I am grateful to the Minister for his response to those amendments, and am certainly grateful to my noble friend Lord Hutton for that important point about how, in the circumstances, it is better to have an express provision than an implied one. I will work through the record of what the Minister said to see how close we got to that express provision, or whether it is still essentially an implied power. I understand what the noble Lord said about the nature of the regulations. That will run through this Bill.

I return briefly to this question of when master trusts are set up but not under a trust. I think the noble Lord said that would be a rare or unusual occasion. I do not know whether he can say a bit more about that. Particularly, the raft of the Bill focuses on the obligations for the trustee or trustees who set up master trusts, but where it is not set up under trust, does it evolve into something that becomes a trust and therefore you get trustees in the normal way or does it continue with some other existence? If the latter, what is the nature of the person who would be a trustee were it set up under trust? That puzzled me a little. If the noble Lord felt it would be better to write to me, I would be happy with that, but if we could deal with it now that would be helpful.

Lord Young of Cookham: The noble Lord is very generous in suggesting that this matter might be addressed better in a letter than in an exchange across the Dispatch Boxes. I made inquiries and it is indeed the case that some are established other than under trusts. Obviously, we do not want a loophole that people can use because they are not formally constituted as a trust. However, I accept the noble Lord's generous offer and will write to him giving a more detailed response to the issues he raised.

Lord McKenzie of Luton: I am grateful to the noble Lord. Just to be clear, in the follow-up I would like to try and see what the role or nature of that person would be who would be a trustee if set up under a trust. Are they something else under a regime that is not set up in that way? Having said that, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendments 14 and 15 not moved.

Clause 7 agreed.

Clause 8: Financial sustainability requirement

Amendments 16 and 17 not moved.

Clause 8 agreed.

Amendment 18

Moved by ***Baroness Drake***

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

"Scheme funding: triggering events

Where—

(a) a triggering event under section 21 occurs; and

(b) the scheme has insufficient resources to meet the costs mentioned in section 8(3)(b); and

(c) a prohibition under section 33 applies;

the Secretary of State shall make provision for a compensation fund or for the funding to be provided by another source as a last resort."

Baroness Drake (Lab): My Lords, Amendment 18 proposes a new clause that, put at its simplest, seeks a compensation fund or provider of last resort when a master trust fails and there are not enough resources to meet the costs of wind-up and transfer. It is the in extremis protection, ensuring a last line of defence for members' funds if the capital buffer required under Clause 8 or the proposed continuity option provisions in Clause 24 fail.

Setting regulatory operational capital requirements for master trusts is important but does not guarantee the security of members' benefits or rights. I am sure the Minister will reassure us that the Government intend to be robust. The trouble is that we are not sighted on the robustness of the capital adequacy or transfer-out regimes—indeed, neither is he at this point—because so much of it is still left to further policy decisions and regulations. Concepts such as "sustainable", "sound" and "sufficient financial resources" are undefined in the financial sustainability requirement in Clause 8. There are no draft regulations for us to consider. There is no provision in the Bill for what happens if the regulatory regime fails to ensure that sufficient financial resources are available in the event of a master trust failure.

The Constitution Committee points out in its letter to the Government of 11 November that Clause 24, dealing with wind-ups and transfers-out, is an example of the Bill delegating the power to make regulations that will determine substantial policy issues when a draft of the regulations is not available and the Government have yet to determine their policy. This regulatory regime will be applied to an existing market that has developed in a variety of ways. The Government cannot guarantee that they will have time before its introduction to create and hold the benign behaviours needed to protect scheme members. The impact assessment acknowledged uncertainty about the Bill's impact because substantive policy decisions will not be taken until the secondary legislation stage. Indeed, such is the amount of further work to be done that the authorisation regime will not come into effect until 2018. The Bill does not make clear what happens if no potential receiving scheme is able or willing to accept the benefits of the members on transfer. The scheme records may be in disarray. The actual costs of wind-up and transfer will not be known or knowable in advance.

Under Clause 33, there are prohibitions on the charges the master trust and the receiving scheme can impose on the members transferring, or on imposing any new charges to meet costs for which a receiving scheme is liable but which were originally incurred by the transferring scheme or as a result of the transfer. If the actual costs of wind-up are very high, the terms of the clause may deter other suitable master trusts from accepting a transfer in whole or in part.

The impact assessment explains that the prohibition on increasing member charges during wind-up and transfer will work because the money to pay for these costs will be met by the access to funding or capital reserves held in accordance with the new financial stability reserve requirements in Clause 8. Yet no regulator can guarantee that those will always be sufficient. Indeed, the impact assessment reasoning is restated by the noble Lord, Lord Freud, in his letter of 14 November. However, neither the Bill, the impact assessment nor the Minister's letter inform us what would happen if, in a particular failing master trust, the capital reserve requirements proved insufficient for whatever reason. The Bill proposes no contingency plan for the failure of a master trust the records of which are in disarray, which has insufficient financial resources to comply with its duty when a triggering event occurs, and for which no master trust is willing to accept transfer of members' benefits. What will happen in those circumstances? How will all the members' funds be protected against increased charges? What liability for or immunity from the past provider's mistakes will a receiving scheme have? What plans do the Government have for ensuring that bulk transfers between master trusts can legally proceed in an efficient and timely manner to ensure continuity of coverage for members of failed master trusts?

The suggested timetable in the Bill indicates that the new regime will come into full effect in 2018, after most remaining employees have auto-enrolled, so it will be some time before it is in place. However, the retrospective casting of the Bill—which I support—means that for existing unauthorised schemes, the scheme funder is liable for wind-up and transfer costs when a triggering event occurs on or after 20 October 2016. What if that funder has insufficient resources, is a limited liability company or is insolvent? Where would wind-up and transfer costs be recovered from?

In his letter of 14 November, the noble Lord, Lord Freud, comments that in such a situation,

"we would expect the normal considerations in terms of insolvency and court proceedings to apply to this financial debt as to any other".

That prompts a series of questions for the Minister. What does that mean? Who would bring the proceedings and how would they be financed? If the members of such a master trust were transferred, would the receiving master trust be covered by the prohibition in Clause 33 on increasing charges? The noble Lord, Lord Freud, further comments in that letter:

"We do not expect the number of trusts who will find themselves in this position … without solutions for their members to be high. We anticipate that the market will wish to consolidate".

That leads to a more general question: how exactly is it to be determined which is the appropriate master trust to be the receiving scheme in a wind-up under Clause 24? How will a potential receiving scheme be identified? Presumably, the regulator will not leave it to other schemes to do some self-organised divvying up. It could be problematic under competition law for a panel of providers to self-organise the divvying up of schemes. Will there be a formal regulatory allocation process, and if so, what will it be?

People need to be reassured that the Bill will provide them with protection in practice. At the moment, that ultimate reassurance is not there. The amendment does not prescribe the model but it fixes the principle of a last resort provision. I recognise that work needs to be done. There are matters to be considered—how to protect against moral hazard; how to ensure that market players do not game the process to cream off the best members; the need to look behind a triggering event to identify evidence of cherry-picking; and the funding underpin for a last resort provision—but there is a compelling need for a compensation or last resort provision, as proposed in the amendment. Without it, the Government cannot credibly assert that the Bill will do what is claimed in the opening line of the Explanatory Notes: protect all savers. I beg to move.

Lord Flight (Con): My Lords, it is actually extremely unlikely—in fact, virtually impossible—that members will suffer if the manager of a master trust gets into difficulties. The assets attributable to the pension fund members are segregated from the assets of the manager. How valuable or otherwise they are will depend upon how well they have been managed and, if there is more than one fund choice, which fund people have chosen.

Secondly, it is clear that the Pensions Regulator will and is intended to play the brokerage role. If it perceives that a master trust manager is in trouble, it will quickly sort out who is going to take over that business. It has value because fees are attached to managing the money, which other master trusts will happily pay. There is even some source of revenue coming back to the master trust in trouble as it is bailed out.

I am afraid that this sort of plaintive request for a compensation fund does not have my support. I thought we had collectively agreed that we did not want another compensation fund. Adding it at the end, almost out of principle, when the chances of it ever being used are virtually zero, is not particularly constructive.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I support this amendment, to which my noble friend Lord Stoneham has put his name. The noble Baroness, Lady Drake, has set out the arguments in depth and there is very little left to say. Some means to guarantee the solvency of master trusts is needed, and will be fair. It is essential that it be fair.

If regulation is working well, it is to be hoped that the costs will be minimised and insured against. The regulator should have an incentive to merge schemes where resources look likely to be insufficient, and means to tide them over should be provided for. In other with benefit schemes, guarantees of last resort are provided and the liability risk is much greater. Confidence in pension schemes is essential. It would be very serious indeed if trusts became insolvent. As has already been said, protection as a last resort should be a rare occurrence. I support the amendment.

6.15 pm

Baroness Altmann (Con): My Lords, I, too, support the amendment. I am concerned that there are well-intentioned measures in the Bill designed to ensure that there is capital adequacy in these schemes. One hopes that they will work but how will any regulator know in advance what capital is actually adequate? The circumstances in which wind-up could take away people's pensions, even if the assets are ring-fenced and protected for the members, are those in which there is no other mechanism for covering the wind-up costs. That is where the members' pensions would be at risk.

Indeed, we saw this a number of years ago with defined benefit pension schemes, which is precisely why we ended up with the Pension Protection Fund. The Government put in well-meaning legislation that required minimum funding standards for defined benefit schemes which were supposed to ensure that members' pensions were safe even if the scheme or the employer failed. Unfortunately, the situation with the schemes—due to lack of competent administration in some cases but not all; sometimes due to market movements as well—led to members losing their pensions, and the only real protection that ended up being available was this backstop insurance in the form of the Pension Protection Fund.

Yes, we need capital adequacy. Yes, the Bill is really important. But I would be really grateful if my noble friends the Ministers explained why the Government do not feel this is necessary, or how proper protection for members in extremis can be provided. For example, will NEST guarantee to take over these liabilities? Is there some other plan? I would be grateful for some reassurance from my noble friends.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): Amendment 18 requires the Secretary of State to,

"make provision for a compensation fund or for the funding to be provided by another source as a last resort",

in circumstances where the scheme has had a triggering event and has insufficient resources to pay the costs referred to in Clause 8(3)(b)—that is, the costs of complying with duties imposed under the Bill during a trigger event, and the costs of continuing to run the scheme for a period of six months to two years—and a prohibition on increasing charges during the trigger period applies.

[LORD FREUD]

The amendment speaks to the heart of what the Bill is about: protecting members. Along with a number of other amendments, it seeks to add further protections and, perhaps, test us a little on the extent of the measures the Government have provided for in the Bill as introduced. I welcome both the focus on member protection and the opportunity to explore the specific measures in the Bill which provide the members with security should the scheme decide to close or start to fail. The amendment would mean that if a scheme experienced a triggering event and had insufficient money to pay for the costs associated with the options the scheme may pursue following a triggering event, other funds must be provided. It also goes further to say that it is the Secretary of State who must provide a compensation fund or for the funding to be provided by another source.

In responding, I will touch on a few areas. I will outline, first, the measures which provide that sufficient funds must be held; secondly, some of the costs and complexities that would be introduced into the system should a compensation fund or other funding be required; and, thirdly, the compatibility with the regime provided for in the Bill.

I turn to the measures which provide that sufficient funds will be held. First, the main provisions in the Bill requiring schemes to hold certain funds are in Clause 8, which provides that for the scheme to be authorised it must satisfy the regulator that it has sufficient resources to meet certain costs. This includes the costs of complying with the requirements under the Bill once the scheme experiences a triggering event and those of running the scheme for a period of between six months to two years, in the event of a triggering event occurring. The Government believe that these measures are sufficient and that this is an appropriate regime for the types of funding in question here. Further, members' savings are protected via the restrictions on using members' pots to pay for these costs provided at Clause 33. We therefore consider that the amendment is unnecessary.

However, it would be helpful to explore the counterarguments or challenges as to whether this is adequate risk mitigation—in particular, to explore any suggestions that there is still some risk in relation to: the period before the authorisation regime is up and running; the calculation of those funds to ensure they are sufficient at the point of need; the availability of the funds at the point of need; and the funds diminishing over time. Finally, what happens if the lack of these funds leads to the regulator withdrawing authorisation and creating a triggering event? Let me set out how those risks are addressed within the regime.

In respect of the period before the regime is up and running, paragraph 7 of Schedule 2 provides that the scheme funder is liable for these costs. It places this liability on the scheme funder when a triggering event has occurred in an existing scheme and the liability for those costs does not lie elsewhere. The prohibition in relation to increasing members' charges applies during this period, so members are protected. If the funder should be in financial difficulty, the matter should be pursued via the normal court channels or insolvency processes. It is not the members' money which is at risk in these scenarios; it is the running costs of the scheme and payment for activities during the triggering event period.

We also know that other schemes may well rescue the failing scheme, as has happened before, to protect the reputation of the industry. This is a different dynamic from what would be the case in non-money purchase schemes, where the debt is about money needed to pay member benefits and where funding obligations to pay for the promised benefits would attach if another entity took over the scheme. The master trust industry can support the movement of members—some trusts are willing to do so—or take over failing master trusts, so government intervention is less warranted where an industry solution may be possible. This might be an appropriate point to deal with the question from the noble Baroness, Lady Drake, about the identification of receiving schemes. They will be on a list kept by the Pensions Regulator, and some industry players may wish to step in and identify themselves.

On whether the funds available to the scheme will be sufficient, regulations will set out matters that the regulator must take into account when deciding whether it is satisfied that those funds are sufficient. We anticipate that these will include matters that will support the establishing of the assets needed to cover these specific costs, such as the business plan, the size of schemes, the costs of contracts and the value of assets, the nature and level of assumptions made in that business plan, the security of the scheme funder and the state of the scheme administration. Also covered will be the range of potential assumptions that may be used in arriving at the figure required.

Regulations may also specify the information that the regulator must take into account and requirements relating to the financing of the scheme or funder, such as requirements relating to assets, capital or liquidity. We anticipate that these will include matters such as how the funds are to be held to ensure that they may be accessed for specific purposes only, so that they are safe in the event of the funder becoming insolvent. In this way the Bill provides that to be authorised, a scheme must hold sufficient funds for those costs and that these funds must be held appropriately.

The supervision part of the regime focuses on ensuring that the funds remain sufficient and are not eroded over time, and that the Pensions Regulator can act swiftly should a drop occur in the funds held. There are measures in the Bill that work together to provide that this requirement to hold funds to cover the costs of the triggering period is an ongoing requirement, and one that the regulator will be able to supervise. Clause 19 states that if the regulator stops being satisfied that an authorised scheme meets the authorisation criteria, it may decide to withdraw the scheme's authorisation.

Further, alongside the information-gathering powers that the regulator has under the Pensions Act 2004, Clause 14 requires the scheme and funder to submit annual accounts, while Clause 15 gives the regulator the power to require schemes to submit a "supervisory return" and Clause 16 places a requirement on certain persons to report "significant events". We anticipate that these significant events will include matters in

relation to the funds held under Clause 8. Through these means, the Pensions Regulator will have a stream of data in relation to which it can make further inquiries to ensure that it remains satisfied that the criteria continue to be met, and it can take action if that ceases to be so.

If the regulator becomes concerned that the assets are no longer sufficient to satisfy it that the criteria are met, it may issue a warning notice to withdraw authorisation, which is a triggering event, and will have access to the pause power and direction-making powers under the triggering-events part of the Bill. In this way, the Pensions Regulator can act quickly and decisively as soon as any risk arises, to diminish risk and prevent the situation deteriorating any further. On the question from the noble Baroness, Lady Drake, about which liabilities the receiving scheme will have for debt in the existing scheme, the Bill imposes no liabilities on the receiving scheme for debt in the existing scheme.

This approach caters for a number of different structures under which the master trust schemes have been set up. It ensures that the regulator can make a scheme-specific assessment of the funds that must be held to cover the requirements. It helps ensure that the risk of the scheme not holding these funds, or of the funds being eroded, is minimised.

In addition to the consideration that this risk is already dealt with via the Bill's provisions, I will turn to a second matter: the costs and complexity that this amendment could introduce into the regime. As soon as compensation is added to the regime—based on the concept that where the funds are insufficient, someone else will step in—an element of moral hazard creeps in, as the noble Baroness, Lady Drake, acknowledged. Master trusts are businesses set up to provide a service to a number of employers. Many are set up to make a profit; some are not-for-profit, but all are selling or marketing their services to employers and must take responsibility for providing protection to their members. I would also be concerned about the added cost of delivering a compensation fund. Noble Lords have left it for regulations to establish whether this fund or requirement would be a government-funded compensation scheme or a levy-funded compensation scheme, or on whom any additional sourcing requirement would be placed. So this would be a broad regulation-making power.

In terms of what type of compensation may be envisaged, if it was levy-based there would be additional administrative costs to consider, as well as additional costs to the schemes that would presumably need to contribute to it as well as holding funds for their own scheme for a very low risk, as my noble friend Lord Flight pointed out. These would be funds that the scheme could not use for its own risk mitigation. The type of risk we are looking at here does not warrant the introduction of a compensation scheme. Members' pots or promised benefits are not at risk. Clause 33 provides protection when a trigger event occurs, as it prevents charges being increased or new ones being introduced. It is about the risk of the scheme being unable to meet costs related to paying for activities under the trigger events such as wind-up, bulk transfers, finding a new funder or suchlike. The cost and complexity of a new compensation fund is not warranted.

A third matter is that I am not convinced that the amendment is compatible with the wider regime provided for in the Bill. There would be some significant challenge in ensuring that this provision did not lead to unintended effects: if, for example, the other source of funding was to place a requirement on a specific person to provide the costs as a last resort. The regime has been specifically crafted to ensure that all types and structures of master trusts can comply with the requirement. This has been specifically designed to ensure sufficient flexibility in enabling schemes to comply with the obligation.

6.30 pm

We place a funding obligation on a specific party in only one place in the Bill: for existing schemes during the period until they become authorised. At that point the scheme will hold the funds as part of meeting the authorisation criteria. Introducing ongoing funding accountability on a particular party external to the scheme would be an alternative rather than a complementary measure to the approach taken in the Bill. The Bill specifically focuses on identifying funds and requiring the scheme to hold such funds, so placing a funding responsibility on another party cuts across these measures.

I hope I have answered my noble friend's questions. The Government's view is that the measures during the period before existing schemes are authorised are appropriate and that the schemes, once authorised, will hold the funds. Clause 33 provides that members' pots are protected by the restrictions imposed on increasing charges. The issue is simply not the same as for defined benefit schemes. The risks and the costs are different.

Baroness Altmann: Will my noble friend write to me with some clarification on how costs would be covered? If a scheme fails and records are in disarray, how would the costs of wind-up be covered? I accept that they cannot come out of the members' pots. If the company running the scheme or the employer has failed, where will the money come from to make sure that members' current pension funds are transferred over and the costs of administering the transfer, executing the bulk transfer and clarifying the records are met? Currently it would seem that the members' pots will be in limbo. The money cannot come out of their pots, but there is no one else to pay.

Lord Freud: The money cannot come out of their pots, but the Pensions Regulator will be looking to transfer those pots to another master trust. The protection that this amendment and my noble friend are suggesting is almost conditioned by what we watch in the defined benefit market. This is a different situation, where there are protected pots. There may be costs in a catastrophic situation, but they will not fall on members, and it is not the job of government to protect non-members from getting into a mess.

Lord Flight: Is it not very simple? The manager of the master trust would go bust just like any other business can go bust. It would go into liquidation and, to the extent that it owed debts to the suppliers of electricity or other such things, they would suffer.

Lord Freud: My noble friend has put very bluntly what I was trying to say in a subtle and gentle way. If the landlord or another supplier to the scheme finds itself out of pocket, for instance, that is what will happen. It will go through the normal insolvency process, but it is not the job of the Pensions Regulator or the Government to be concerned about that. Our concern is purely with the members' pots. Are they protected and is there a process to transfer them to someone who can look after them properly? I hope that is what I have been able to explain in an overlengthy reply. I hope it has enabled the noble Baroness to withdraw the amendment.

Baroness Drake: I shall try to pick up some of the Minister's points. There was a lot of detail in his reply. I am conscious of the time. I shall start with the risks that we are trying to mitigate; there seems to be a lot of confusion about them. The risk this Bill is trying to mitigate is that the costs associated with managing scheme failure and winding up the scheme fall on the members, so their pots are drained to pay for them. Their pots are not protected. We are talking not about the equivalent of a DB benefit provision or a Financial Services Compensation Scheme provision on an annuity, but about the specific risk that the Explanatory Notes and all the associated documents from the Government in support of the Bill identify that it is seeking to mitigate. Members' pots should not be raided to pay for a master trust failure.

The Minister set out in great detail how the authorisation regime, the supervision regime and the scheme failure resolution regime will work very effectively to protect the members against that risk. That was very clearly laid out. I complimented the Explanatory Notes and other documents at Second Reading. It is possible to clearly follow the regime proposed. However, the regulatory regime cannot ensure that the capital adequacy and supervision regime will always ensure sufficient resources in the scheme to finance the cost of failure in respect of wind-up and transfer costs. That is the risk we are trying to deal with. It is not the function of a regulator, whether it is the PRA, the FCA or anything else, to eliminate all risk. It cannot possibly do so, unless there is an unlimited guarantee from the taxpayer always to remove risk in a regulated system.

This amendment seeks to address what happens when the regulatory system around capital adequacy or resolution through transfer of another scheme does not work. As the noble Baroness, Lady Altmann, said, at the moment there is only one place to go, which is back to the members' pots, which will be drained.

If I heard the Minister correctly, he said that there would be no liability for debt placed on the receiving scheme in a transfer situation, so he is saying that if there are insufficient resources in the failing master trust they cannot be offloaded on to the receiving scheme on transfer. They are still floating around to be paid for, so we cannot put them there and we cannot put them on the financial resources in the capital adequacy regime because that has failed, so we are still waiting for someone to pick up these costs because the only thing exposed at the moment is the members' pots. In that situation, no regulator can guarantee whether there is a suitable master trust that will pick up all the members. It may want to cherry pick some and leave a rump behind. We do not know how this will play out. What has to be possible is that the capital adequacy and supervision regime does not always work and, if there is any one occasion when it does not work, the prohibition clause—Clause 33—cannot work because prohibition on increasing member charges when a failure takes place can operate only if someone provides the resources to fund that prohibition on increasing the charges.

There is no provision in the Bill or in any other policy document from the Government that states that, if a scheme fails in extremis and there are not the resources in place, there is no one to fund the prohibition order on increasing charges as a result of managing that failure other than the members' pots.

Lord Freud: I want to be very clear. There was a useful dialogue between me and my noble friend Lord Flight. I would like to repeat what I said. I am not saying that no one will lose money if something goes wrong; what I am saying is that it will not be the members because their pots are protected.

We have bankruptcy or insolvency proceedings for other people when they get into financial trouble, but that is a separate matter. The members are protected. What we are worried about in this Chamber is the position of the members, and Clause 33 provides that fundamental protection. It is not open to the failing scheme funder to raid those pots; that is prohibited, and we have a regime to prevent it happening.

Just because someone somewhere loses money around this process does not mean that we need a compensation regime. I want to make that utterly clear, because there seems to be a concern to see that nobody can lose money. If people mess things up, they may lose money—but members will not lose money.

Baroness Drake: I accept the clarification from the noble Lord. The amendment—which at this stage is partly probing, although underlying it is a principle that is a matter of substance—was not intended to prescribe the model. It does not say it has to be a compensation fund—it could be a provider of last resort—but there needs to be an explicit provision in the Bill that makes it clear what happens to protect the members' pots when the supervisory and capital adequacy regime fail in a failing master trust. I do not believe that the Bill addresses that at the moment. I am not arguing for a particular model; I am arguing for a principle of absolute clarity as to how members' protection against exposure to meeting the cost that I described—the risk that the Bill seeks to mitigate—will be addressed in an in extremis position.

It is not a plaintive request—I say to the noble Lord, Lord Flight, that I am not a plaintive request person. I am standing here quite firmly because potentially 7 million people are going to be affected and, over time, there will be trillions of pounds under management. This matter is worthy of interrogation, rather than us simply hoping.

Lord Flight: The issue is an administrative one, in that you have people's pension fund money, and the manager has got into trouble and, let us say, gone into

liquidation. What administration would make sure that a new manager takes over and continues to investment-manage those pots of money? There have been suggestions that the Pensions Regulator himself should be empowered, or maybe required, to act as a broker with regard to such arrangements, but that problem has not yet been solved. That, surely, is the practical issue, not people losing money out of their pension pots.

Baroness Altmann: The issue that we are dealing with is indeed an administrative issue, but saying members' pots are protected does not protect members' pots. In a scheme which has failed and is winding up, and whose administration is in disarray, it will take some time and money to decide and assess how much each member's pot is actually worth, for example in the cases of a big master trust whose systems fail or of a smaller master trust whose systems simply were never up to scratch. We have 80 or so master trusts out there at the moment and have had no protection regime at all, no capital adequacy rules and no proper assessment of the quality of the trusts. We have so many members' pension funds growing for them, and there is the possibility that more than one of these schemes will fail and need to wind up. There will be costs associated with assessing what the value of those members' pots actually is. I do not hear anything at the moment that explains how the costs of administering and sorting out the records of that scheme, so that we know what each member's pot is worth, are going to be funded. If the Pensions Regulator finds a way to pick up the cost, if NEST has to pick up the cost or if there is some insurance regime for industry-wide assessment of those costs, that is fine, but I just feel that we are assuming that this will be a wind-up of a scheme whose records are fine and it will be shipped off to another scheme, which will want to earn money for those members. That is not the case that is necessarily going to arise.

6.45 pm

Baroness Drake: I thank noble Lords for the supportive argument on the point that I am trying to make. I should pull this to a close. It is not that the proposals in the Bill around authorisation, supervision and resolution on failure are, of themselves, something one would want to challenge—although there is the issue of how they and some of the policy will work in practice—it is what happens in the situation that the noble Baroness, Lady Altmann, set out, when one has a failure, costs are incurred in dealing with that failure and insufficient financial resources are available. How are the members' pots protected in those situations? The reasoning in the impact assessment is that the prohibition in Clause 33 works because there will always be financial resources to fund it, but it is not clear, in the terms of the Bill, that there will always be financial resources outside of accessing the members' pots. However, I beg leave to withdraw the amendment.

Amendment 18 withdrawn.

Clause 9 agreed.

Clause 10: Scheme funder requirements

Amendment 19

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

19: Clause 10, page 6, line 36, leave out "constituted as a seperate legal entity" and insert "approved by the Pensions Regulator"

Lord McKenzie of Luton: My Lords, in moving Amendment 19, I will also speak to Amendment 20, which is grouped with it. Amendment 19 would remove the requirement that the scheme funder is constituted as a separate legal entity and, as an alternative proposition, would require it to be approved by the Pensions Regulator. Amendment 20 would remove the requirement that the scheme funder can carry out only activities that relate directly to the master trust scheme.

Taken together, it has been raised with us that, although it seems to be the intention that each scheme should have a scheme funder, the Bill does not actually require that. A variety of different structures are used for current master trusts, and the definition in the Bill does not fit easily with many of them. In particular, the requirement for a scheme funder to operate only a single master trust would require a number of existing schemes to move from being supported by an FCA-regulated entity with significant financial resources to being supported by a single-purpose vehicle set up just to run the master trust. The policy rationale for this is unclear, and perhaps the Minister would clarify whether that really is the intention.

Clause 10(3) would also prevent a single provider supporting more than one master trust, and it has again been put to us that this is likely to inhibit consolidation and the ability to rescue failing schemes, which we have just been discussing. It has been suggested by the ABI that, where the scheme funder is an FCA-authorised insurer, the requirements of Clause 10 should not apply. Alternatively, as our amendment suggests, that flexibility could be achieved by requiring the scheme funder to be approved by the Pensions Regulator. When it comes to submission of accounts, the insurer would not typically split out master-trust lines of business, and might have to rely on the PRA's work to assess the strength of relevant firms. As suggested under Solvency II, firms must hold capital against pension scheme risks. These capital requirements are onerous and it does not seem reasonable to require the holding of additional capital on top of them.

If an existing body corporate conducts activities that relate directly to more than one master trust scheme, what do the Government actually want it to do? Splitting an existing operation into separate companies, even within a group structure, may not be without cost, including taxation. Further, how is this meant to work where a master trust provides money purchase benefits as well as other benefits? Clause 10 treats a scheme funder as a separate legal entity if, inter alia, it carries out activities only relating directly to the master trust scheme if it is a master trust scheme, as distinguished from a master trust, only to the extent that it provides money purchase benefits. So how can Clause 10 (3)(b) be satisfied where a master trust provides money purchase and other benefits? I beg to move.

Lord Flight: My Lords, I believe this clause has aroused most concern in the industry, particularly the insurance industry. A number of organisations, particularly life offices, undertake a range of business activities in addition to simply sponsoring a master trust. The clause suggests that the scheme funder or sponsor must set itself up as a separate legal entity and undertake no other activity beyond sponsoring the master trust. Given that the whole purpose of the Bill is to ensure that funds are available to see through the orderly exit of the scheme's sponsor, the provisions of Clause 10 as it stands are surely counterintuitive. One wants the sponsor to be as strong financially as possible, but the clause as it stands could well invoke the very thing that the Government are trying to avoid.

More specifically, as the noble Lord has pointed out, the insurance industry typically will have master trusts side by side with group personal pension schemes. As matters now stand, they are regulated by the FCA and PRA, and there would be a considerable duplication of regulation under the arrangements as proposed. I am sure the Government have focused on this, but I certainly feel that Amendments 19 and 20 are appropriate to address the problem that stands.

Baroness Altmann: My Lords, I echo the comments made by my noble friend Lord Flight. Why do the draftsmen of the Bill think that having a separate legal entity is definitely a good thing? What are the risks that this approach tries to close down? Perhaps if we could understand those risks better, we might be able to address the issue in a slightly different way. Is the aim somehow to ring-fence the DC covenant of the scheme funder and prevent them from having other financial obligations that might take away from the support for this master trust, or to minimise the burden on checking accounts? Obviously, it is easier to review the accounts of a stand-alone entity than of a much broader group. Hopefully, if we could better understand what the rationale is, it might be possible to address some of the very important concerns that have been expressed by some of our major insurance companies.

Lord Young of Cookham: I am grateful to the noble Lord, Lord McKenzie, for his amendment. I gently point out that there is a spelling mistake in it, but there are other reasons for resisting it.

Amendments 19 and 20, tabled by the noble Lord and the noble Baroness, Lady Drake, deal with Clause 10, which sets out the requirements that a scheme funder must meet in order for a master trust to be authorised. I hope to explain to noble Lords, particularly my noble friend, the thinking behind insisting that there is a separate legal entity behind each scheme. A scheme funder by definition is key to the master trust's financial sustainability. By "scheme funder" we mean a person who is liable to provide funds in relation to the scheme when the administration charges paid by and in respect of members are not sufficient to cover the scheme's costs, or someone who is entitled to receive profits when the scheme's charges exceed its costs.

Amendment 19 would remove the requirement for the scheme funder to be a separate legal entity that carries on business activities only directly related to the master trust, and would replace it with a requirement for the scheme funder to be approved by the Pensions Regulator. I listened with interest to the points that noble Lords made in respect of that amendment. Amendment 20 would similarly remove the requirement for a master trust's scheme funder to be a separate legal entity that carries on only the master trust business. The effect of both amendments would be to allow the same legal entity that acts as scheme funder to engage in business activities not directly related to the master trust, making it more difficult for the Pensions Regulator to identify matters relevant to the master trust and therefore to assess the financial sustainability of the scheme.

To enable the regulator to assess the financial position of the scheme with certainty when deciding whether the master trust should be authorised or remain authorised, the scheme funder must be set up as a separate legal entity. This is defined in the Bill as meaning, in effect, a legal person whose only business activities are in relation to the master trust. Requiring scheme funders to be separate legal entities will make their financial position, and the financial arrangements between them and the master trust, more transparent to the regulator and provide greater clarity regarding the assets, liabilities, costs and income in relation to the master trust business. This will greatly assist the regulator in carrying out its assessment of schemes' financial sustainability.

There will be greater transparency regarding any additional funding streams coming into the scheme funder entity, and the level of commitment of those funds for the purposes of running the master trust, should the scheme funder be in receipt of income generated from other lines of business carried on by connected entities. The amendments would remove that transparency by making it possible for the scheme funder to carry on business activities not related to the master trust under the same corporate entity. It would therefore be difficult for the regulator to identify the financial sustainability or otherwise of the master trust.

One of the other authorisation criteria of which the regulator needs to be satisfied is that the people involved in the master trust scheme are fit and proper. Clause 7 specifies people that the regulator must assess for this purpose, including the scheme funder. It is not clear to what extent Amendment 19, requiring the scheme funder to be approved by the regulator, would differ from the assessment that the regulator is already required to carry out under Clause 7. Requiring the regulator to approve the scheme funder in general terms, rather than setting out requirements in the primary legislation requiring the scheme funder to be set up as a separate legal entity, would not only potentially make the financial sustainability of the scheme less clear to the regulator but would also give master trusts and scheme funders less certainty about the conditions that must be met for authorisation.

To turn back to the requirement for the scheme funder to be set up as a separate legal entity, I am aware that a number of concerns have been raised about the impact that this will have on existing businesses, such as the removal of protection and cross-subsidy through diversified lines of business supporting the

master trust, restrictions on the use of shared services and the disruption of existing business. I shall come to each of these in turn, but I reassure the House that this authorisation criterion is not designed to prevent funds from flowing from one business to another, nor is it our intention to disrupt existing arrangements unnecessarily. The overarching aim of the requirements is transparency in the cash flows to and from the master trust business, and the assets and liabilities related to it, so that the regulator can readily ascertain the financial position of the scheme funder and the financial arrangements between the funder and the scheme. I think that paragraph answers the question asked by my noble friend Lady Altmann.

The requirements in Clause 10 do not prevent the master trust benefiting from the support of other businesses. Support can be offered from the scheme funder's wider group explicitly through the provision of a legally enforceable guarantee or other formal arrangement from another group company of sufficient financial strength. Where the scheme funder currently conducts other businesses, a degree of cross-subsidy may already take place, and there is no intention to prevent this.

7 pm

However, we consider that it is in the interests of master trust operators and potential users to have a full understanding of the financial sustainability, or otherwise, of the master trust operation in isolation. If the operation is not financially sustainable and requires the support of the wider group to operate, we consider that the most appropriate way is for that support to be provided transparently and explicitly, rather than through the implied support offered as being one element of a company with multiple lines of business.

Requiring scheme funders to be set up as separate legal entities is not intended to require the unpicking of any shared service arrangements. Many financial services companies—indeed, many other companies—will use staff, systems and premises for multiple business lines, and usually allocate those costs as accurately as possible across the relevant activities. We expect any costs allocated to the master trust to be transparent to the regulator through the business plan, accounts and other related documents.

Groups of companies are used to restructuring their statutory accounting arrangements to reflect changes in focus, and master trust schemes in operation when the authorisation regime commences will be given a transitional period to comply with the requirements and apply for authorisation. If the scheme funder wants to pursue other business activities not related to the master trust, it may do so through another vehicle, or establish the master trust element as a separate entity.

I hope that that somewhat detailed explanation in relation to Amendments 19 and 20 reassures the noble Lord and the noble Baroness that the guiding principle behind requiring the scheme funder to be a separate legal entity whose business activities solely relate to the master trust is transparency. I also hope that I have set out why it would not be appropriate to substitute the requirements proposed in the Bill for a responsibility that would sit with the regulator to assess whether a safe and appropriate degree of separation between the master trust and the scheme funder's other business has been achieved. That would provide an inferior level of protection to members. On that basis, I ask the noble Lord to withdraw the amendment.

Lord McKenzie of Luton: My Lords, I thank the Minister for that detailed explanation. Again, we will need to read the record to make sure that we have fully understood the proposition. Incidentally, I should thank him for pointing out the spelling error, but offer even greater thanks to those who did not.

The nub of the issue is that this is to help the regulator establish financial sustainability and make it easier to interpret the data before it. One can readily see that there will be a range of circumstances where it will be quite appropriate for a separately constituted legal person to be the sole funder, but, as we have discussed, the issue is wider than that.

The Minister said that it is unnecessary to unpick shared service arrangements. I question how that is consistent with what is in the Bill. Clause 10(3)(b) states:

"the only activities carried out by the body corporate or partnership are activities that relate directly to the Master Trust scheme".

Where a scheme funder provides, on a transparent basis, services to a group company and charges for them without affecting the master trust scheme, how is that possibly consistent with the requirement that the only activities carried out by the body corporate are those that relate directly to the master trust scheme? I really do not see that it is. Perhaps the Minister will reflect on that and write further in due course.

There is also an issue about how this is all consistent with arrangements for non-money purchase benefits. I think that the structure of the Bill is that you take them out of the picture—they are not considered in all this—but, again, if those are the arrangements in a single funder which is supporting both of those lines of business, it seems to me that you cannot simply ignore that for the purposes of interpreting Clause 10(3).

This requires a rethink. I understand the Minister to say that there will be some period upfront when existing arrangements will be unpicked and restructured, and that may help, but how is an FCA-regulated entity, which is stringent in its capital requirements but covers a range of group entities, to be restructured? Do they have to be moved out? Does the single entity left, which is dealing with the master trust, have to go through an equivalent FCA approval process to ensure an equivalent position at the end of the day? It does not make sense. We understand the benefits of transparency, and there may well be a range of circumstances where it is better to have a separate body corporate, a legal person with a clearly identified, separate funding stream. However, if that is to be the only way it can be done, that creates enormous problems, particularly for funds operational now.

Like the noble Baroness, Lady Altmann, and the noble Lord, Lord Flight, we have continuing concerns which, with respect, have not been answered tonight. I do not know whether the Minister wants to have another go, but if he does not, I beg leave to withdraw the amendment.

Amendment 19 withdrawn.

Amendment 20 not moved.

Clause 10 agreed.

Clause 11: Systems and processes requirements

Amendment 20A

Moved by ***Baroness Bakewell of Hardington Mandeville***

20A: Clause 11, page 7, line 19, leave out "must" and insert "may"

The Lord Speaker (Lord Fowler): My Lords, there is an error in the Marshalled List. Amendment 20A should read: "page 7, line 19, leave out 'may' and insert 'must'".

Baroness Bakewell of Hardington Mandeville: My Lords, I thank the noble Lord the Lord Speaker for putting the House right on that; the error was pointed out to me this morning. I shall speak briefly to the amendment.

All the information requirements relating to scheme processes as set out in Clause 11(4) are integral to a thorough assessment of a master trust's capacity to run a scheme effectively. Therefore, it should be mandatory for regulations to include provision about the regulations. Master trusts must be effectively run so that members can be sure that their money and futures are secure. Security around master trusts is key to their success. It is much too important to be left to possible regulation; it needs to be enshrined in the Bill. I look forward to hearing what the Minister has to say about the amendment, and I support all the other amendments in the group.

Baroness Drake: My Lords, I shall speak to Amendment 21 and other amendments in the group. Amendment 21 would make it a process requirement under Clause 11 on authorised master trusts when making investment decisions to consider,

"environmental, social and governance risks",

Most investments in master trust schemes will be longer term and therefore exposed to longer-term risks. Consideration of those risks, which include such factors as climate change, unsustainable business practice and unsound corporate governance, is integral to the long-term sustainability of the investments held. The assessment of these risks should not be seen as an ethical extra but, rather, potential vulnerabilities to the sustainability of the scheme which should be properly understood.

The Pensions Regulator code of practice strengthened guidance for trustees on consideration of ESG risks, but it is not legally binding and there is no direct penalty for failing to comply. At a recent pensions conference, Andrew Warwick-Thompson, the executive director of the regulator, warned trustees against complacency when assessing ESG issues within portfolios. He commented that the regulator expects trustees to take ESG issues into account, saying,

"I would urge any trustee or asset manager out there who still thinks these things don't matter to wake up and smell the coffee".

He referred to research by Professional Pensions which showed that only 18% of responses from trustees, fee managers and pensions professionals thought trustees should be obliged to take ESG issues into account.

If many in the industry are reluctant to make an assessment of ESG risks, it is hardly an auspicious basis for optimism that a voluntary code will work. As the regulator himself commented:

"We need to guard against complacency here".

There is increasing evidence showing that companies which perform well on ESG produce better returns for investors. Poor corporate practice has a real effect.

Master trusts have already grown exponentially against the background of a regulator having insufficient powers, relying instead on exhortations to trusts to embrace the voluntary master trust assurance framework. That did not work. With this Bill the Government are trying to put things right. The regulator expects ESG risk to be assessed. The amendment moves beyond expectation to a process requirement that trustees actually consider these risks. I ask the Minister: will the requirements under Clause 11(4)(d) include a specific requirement to assess ESG risks?

Amendment 22 requires an authorised master trust to have processes in place for the identification, reporting, managing and minimising of any conflict of interest. How to manage conflicts of interest in a master trust is an, as yet, unresolved problem. It is difficult to assess how this Bill will resolve it because of the policies still to be decided. In 2012 the Pensions Regulator, when investigating potential conflicts of interest in master trusts, commented:

"It is very hard to understand how and when they are acting as agents of the provider and when they are acting in the best interests of the member".

In 2013 the then Office of Fair Trading raised concerns that some trustee boards were not sufficiently independent of the master trust provider to avoid conflicts of interest and always act in beneficiaries' best interests. The Occupational Pension Schemes (Charges and Governance) Regulations 2015 introduced stricter requirements on master trusts and although welcome, they are not sufficient to address potential conflicts of interest. Trustees of occupational pension schemes are required to have a process in place to identify and manage any conflicts of interest and there is a regulatory DC code which recommends minimum controls. But they do not meet the conflict of interest challenges in a master trust.

Market pressure, combined with sound regulation, are important tools in the fight against conflicts of interest. The only trouble is that in the pensions market there is little pressure coming from the supply side, the scheme member—a proposition we have rehearsed so many times in debates in this Chamber and in the other place.

The Government's impact assessment identifies the particular risks that master trusts pose, which compellingly support specific regulation for identifying, reporting and managing conflicts of interest. Master trusts develop new types of business structures which alter the relationships between members, employers, trustees and providers, on which occupational pension law and regulation is largely based. There is no requirement to

include member or employer representatives on the board, and providers have a significant influence over who they appoint.

Many master trusts have been set up with a profit motive—something that existing occupational pensions' regulation does not cater for. As the OFT observed, this is a concern and a complex area as these companies have obligations to their shareholders and other stakeholders and, as with any company, seek to make a profit. IFAs and fund managers may be part of the provider group that set up that master trust.

The trust deed in a master trust can inhibit the trustees from acting in the best interests of members if the rules fetter their powers. The master trust multi-employer characteristic can increase complexity and, with it, the potential for conflicts of interest. The products they provide are not covered by ECA regulation.

7.15 pm

I ran through the list because, taken together, every one of those risks identified by the Government in the impact assessment compellingly supports a requirement for identifying, reporting and managing conflicts of interest in an authorised master trust. Given all the particular risks that the Government's own impact assessment identifies, will the requirements under Clause 11 include a conflict management obligation? All of the requirements which master trusts meet under Clause 11 are important, so I ask the Minister whether there will be a set of minimum requirements that all master trusts must meet.

Finally, Amendment 27 in the group provides for regulations on systems and processes requirements—the key authorisation criteria in this Bill—to be subject to affirmative resolution. I accept that it is not unusual in pension legislation for detail to be delegated to regulation. I am not seeking to row against that. However, I believe the circumstances in this instance are different. These requirements go to the heart of how these master trusts are to be run. This is a new regime. There are no draft regulations before the House and policy matters are still to be resolved. This is a new regime of protection for what could be 6 or 7 million savers, or more. It is not a trivial matter. When the noble Lord is balancing whether they believe the Government have it right in terms of negative and affirmative resolution, I ask that the Minister focuses on these requirements and the regulations, certainly in the first instance.

Lord Young of Cookham: My Lords, I am grateful to those who have spoken to this group of amendments to Clause 11, which sets out one of the authorisation criteria, namely,

"that the systems and processes used in running the scheme are sufficient to ensure that it is run effectively".

Amendment 21, tabled by the noble Lords, Lord McKenzie and Lord Monks, and the noble Baroness, Lady Drake, would amend Clause 11(4)(d) by making it clear that regulations on the matters that the regulator must take into account in deciding whether the schemes, systems and processes are sufficient to ensure that it is run effectively may include provisions about the processes that master trusts are required to follow in relation to environmental, social and governance risks. I think the intention behind the amendment is to do it in relation to the transactions and investment decisions of the scheme, rather than across the range of systems and processes that a scheme may operate on a day-to-day basis, such as staffing and travel. I see the noble Baroness nodding in assent.

Given that this amendment adds environmental, social and governance risks to subsection (4)(d), alongside processes relating to transactions and investment decisions, I am responding on the basis of that first interpretation. Clause 11 sets out specific areas that the Secretary of State may include in regulations and that the Pensions Regulator must take into account when deciding whether it is satisfied that the systems and processes adopted by schemes are sufficient to ensure that they are run effectively.

I have enormous sympathy with the case made by the noble Baroness that environmental, social and governance risks should feature in the way she described, but I remain to be persuaded that it needs to be included in the Bill. There are a number of reasons why. The current regulatory framework allows for ESG—environmental, social and governance—issues to be taken into account. TPR guidance makes it clear that trustees should take into account long-term financial sustainability in their investment strategies and new requirements can be inserted without primary legislation.

Environmental, social and governance issues are already, broadly, taken account of through the existing regulatory arrangements which apply to trustees of pension schemes with 100 or more members, including the statement of investment principles for their scheme, as set out in the investment regulations. The statement must include details of the extent to which the trustees take environmental, social and other factors into account in selecting, retaining and realising investments. These principles have been further supported by the Law Commission's review of fiduciary duty, which confirmed that trustees should take these factors into account when they are financially material.

The Pensions Regulator has incorporated the Law Commission's conclusions into its guidance for trustees and its code of practice on "Governance and administration of occupational trust-based schemes providing money purchase benefits", which gives practical guidelines on how to comply with the legal requirements of pensions regulation. This guidance sets out the regulator's expectation that when setting investment strategies, trustees will,

"take account of risks affecting the long-term financial sustainability of the investments".

In addition, Regulation 4 of the investment regulations supplements trustees' fiduciary duties under trust law by requiring that the assets of all pension schemes must be properly diversified in such a way as to avoid excessive reliance on any particular assets, and to avoid accumulations of risk in the portfolio as a whole. Should the Government subsequently decide to make regulations about the adequacy of the processes that master trusts are required to take into account in relation to environmental, social and governance risks in relation to investments, I can assure noble Lords and the noble Baroness that regulations would be able to cover this even if it was not specified in the Bill, as is

[Lord Young of Cookham]
done by the amendment. I hope I have said enough to explain why I am not of the view that the amendment should form part of the Bill.

Amendment 22 seeks to insert a new subsection into Clause 11 (4)(g) to make it clear that regulations about the processes used in running the scheme, which the regulator must judge are sufficient to ensure that the scheme is run effectively, may include provision about identifying, reporting, managing and minimising conflicts of interest relating to the work of trustees. The noble Baroness spoke about some of the risks involved here. The objective of Clause 11 is solely to ensure that the schemes are run effectively. It is not directly concerned about the conduct of the trustees undertaking their duties in relation to the pension scheme.

The Government recognised the potential for trustees' conflicts of interest to arise in some multi-employer schemes and addressed this by introducing additional governance requirements for multi-employer schemes. These provisions were introduced in the Occupational Pension Scheme (Charges and Governance) Regulations 2015, which amended the Occupational Pension Schemes (Scheme Administration) Regulations 1996 to require, first, that there should be a minimum of three trustees, and that a majority of these three or more trustees, including the chair, must be independent of the scheme's service providers. Furthermore, the trustees must be subject to fixed-term appointment and appointed via an open and transparent recruitment process. The trustees must make arrangements to encourage members to make their views known to trustees on matters concerning the scheme. When establishing whether a trustee is independent of the scheme's service provider, various matters must be taken into account, which are set out at Regulation 28(3) of the scheme administration regulations 1996 as inserted by Regulation 22 of the charges and governance regulations. An example is whether the trustee is a director, partner, or employee of an undertaking which provides advisory, administration, investment or other services in respect of the scheme.

In addition to these requirements that are currently placed on trustees, Clause 7(2)(c) places a requirement on the Pensions Regulator to assess whether a trustee of a master trust scheme is a fit and proper person as part of the decision on the application to establish a master trust, as set out in Clause 5(3)(a). Clause 7(4)(b) provides for the Pensions Regulator to take into account any matters it considers appropriate that are not covered by regulation when assessing whether a person is a fit and proper person to act.

When the Pensions Regulator is no longer satisfied that an authorised master trust scheme meets the authorisation criteria, including whether a trustee of the scheme is a fit and proper person, Clause 19(1) allows for the authorisation to be withdrawn. Clause 19(2) and (3) provide the process that the Pensions Regulator must follow once a decision has been made to withdraw authorisation. So, in light of existing legislative requirements setting out the required propriety and conduct of trustees of pension funds, and the clear role of the Pensions Regulator set out in the Bill to ensure that trustees of master trust schemes are fit and proper persons, I believe that this amendment is not necessary.

Amendment 23 requires the Secretary of State to make regulations that set a minimum requirement for each of the processes listed in subsection (4)(a) to (g) of Clause 11. I agree in principle that the question of minimum standards is a key one, but I reassure noble Lords that the clause as drafted enables the Secretary of State to set out in regulations factors and standards to which the Pensions Regulator must have regard when deciding whether it is satisfied that a scheme's systems and processes are sufficient. However, the key difference between the drafting of the Bill now, compared to how the amendment would alter its meaning, is that the amendment states that regulations "must" make minimum requirements.

There are two closely related reasons why I shall ask the noble Baroness not to press her amendment. Both my points flow from the principle that the regime has been designed to ensure that we do not mistakenly apply a one-size-fits-all requirement to schemes. A minimum requirement, as something that necessarily has to be set out in regulations, may have some unintended consequences. First, were a minimum requirement to be applied, there is a risk that the one-size-fits-all approach could cause some schemes to fail to meet the criteria and therefore fail to achieve authorisation, despite having systems and processes which are sufficient to ensure that the scheme is run effectively.

Secondly, not all of the specified processes easily lend themselves to a minimum requirement. This brings a similar practical consequence to the point that I have just mentioned. Further, addition of the "must" in this amendment may result in finding the Secretary of State in a position where he cannot comply with his regulatory duties because there is no one-size-fits-all requirement in that case. An example for both these scenarios would be resource planning, where flexibility would be needed to cater for different scheme requirements. Another would be in relation to records management or administration, where flexibility would be needed to cater for different scheme requirements, sizes and structures.

For example, we would want to ensure that administrative systems must be adequate to support current operations; regularly monitored to ensure capacity; and adequate to support the anticipated growth of the scheme. This is more flexible than a minimum standard and tailored to a scheme's own strategy for achieving sufficient scale. I hope that I have said enough for noble Lords to concur that the question of minimum standards is a key one, and that we will seek to use the regulation-making power in this way when appropriate, taking account of considerations to which I have just referred.

Finally, Amendment 20A stipulates that regulations about the processes must include provision about the areas listed under subsection (4) of the clause. As I have noted previously, we want to consult industry and other interested parties on the content of regulations made under Parts 1 and 2. The list provided at subsection (4) has been included in the Bill to provide clarity to industry now about the areas that the

Government believe such regulations are likely to cover. However, the Government do not intend to stipulate the areas that must be included in the regulations made under this clause without consulting on those regulations. I hope that I have made the right assumption about what the amendment is aimed at and explained why the change would not be appropriate.

Finally, we have our old friends, negative and affirmative. I can only repeat what I have said on earlier occasions, and what my noble friend has said before—namely, that we would like to reflect on the balance of affirmative and negative in the Bill as a whole and come up with a balanced assessment of what we believe to be appropriate. On that basis, I hope that the amendments will not be pressed.

Lord Kirkwood of Kirkhope (LD): My Lords, I support the case that the noble Baroness made for Amendment 22. I am very worried about conflicts of interest. The Minister was very generous and set out a detailed explanation that will repay careful study by us all tomorrow. I will certainly do that. What happens to trust deeds in all this? My experience as a defined benefit trustee is that the trustees have control, responsibilities and duties and are able to effect measures through the trust deed. We seem to be leaving all that to one side in this legislation. There may well be a case for not including measures such as Amendment 22 in the Bill. However, fundamentally different conflicts of interest face trustees in a profit-making master trust situation when they have members on the one hand and providers on the other. I am sure that the noble Baroness, Lady Drake, who knows a lot more about this than I do, makes an important point here. I am willing to discuss how we resolve this issue and whether we include the relevant measure in the Bill, but I will be following it very carefully as this legislation goes through.

Lord Young of Cookham: I take the noble Lord's point. Under the authorisation criteria, the Pensions Regulator has to assess,

"whether each of the following is a fit and proper person",

and one of them is a trustee. However, I take on board what the noble Lord says, which echoes what he said in an earlier debate—namely, that we should not lose sight of the responsibilities of trustees when we focus on the Pensions Regulator and everybody else. I should like to reflect on the point he has made and, indeed, the other point made about potential conflicts of interest and master trusts.

Baroness Bakewell of Hardington Mandeville: I thank the Minister for his very full response on all the amendments in this group. I agree that long-term financial sustainability is very important. I noted that when he talked about the responsibilities of trustees, he said that they "must" do certain things, not "may", yet the Bill says "may" and not "must". I will look in detail at what the Minister has said and I will be looking for clarity in the Bill. However, given the hour, I beg leave to withdraw the amendment.

Amendment 20A withdrawn.

Amendments 21 to 25 not moved.

Clause 11 agreed.

House resumed. Committee to begin again not before 8.32 pm.

Drugs Policy

Question for Short Debate

7.33 pm

Asked by ***Baroness Meacher***

To ask Her Majesty's Government what policy changes they plan to introduce in response to the call from UN officials at the Special Session on Drug Policy on 19–21 April for member states to introduce evidence-based policies to promote public health and to place health rather than prohibition at the heart of drug policy.

Baroness Meacher (CB): My Lords, I want to put on record the significant change in the position of the United Nations on drug policy at the UN General Assembly special session in April this year. This is a transformation in the UN position after no fewer than 55 years of a destructive, prohibitionist interpretation of the UN conventions.

The stated objective of the UN conventions on drugs is to advance the health and welfare of mankind. That remains a good starting point today. The problem has been that the UN conventions of 1961, 1971 and 1988 were drafted without any evidence base. In 1961, there was virtually no understanding about how best to reduce addiction and the harms caused by drugs and the drug regime itself.

For a long time it was believed that prohibition and prison sentences would create a drug-free world. President Nixon famously predicted such an outcome. How wrong he was. For more than half a century, far from reducing drug use and addiction, the prohibitionist approach has been accompanied by an explosion in drug use across the globe. The regime has generated a trade worth more than $300 billion for criminal gangs and terrorists. What an outcome.

For the past six years, our All-Party Parliamentary Group for Drug Policy Reform has been promoting the arguments for a new interpretation of the drug conventions through our international meetings of Ministers and senior officials from Latin America and Europe, our European initiative, my meeting with the ECOSOC president, and our briefing of President Santos of Colombia—a key player—before the UNGASS this year. Our guidance on interpreting the UN conventions provided the text for our international work. Human rights and public health were central to our argument, along with the emphasis upon flexibility and evaluation of new policies to produce an evidence base for future drug policy. We produced the guidance with the support of the White House senior staff in Washington and senior officials on drug policy in Mexico. George Soros, who backs our ideas, provided an invaluable link between ourselves and the deputy Secretary-General of the UN. He, too, supports our arguments. It may seem fanciful but I am confident that our small input to the key players of the UN and US was helpful but, of course, the presence of President Obama in the White House must have been a key factor in these developments.

[Baroness Meacher]

At the UNGASS in April, the deputy executive director of the United Nations Office on Drugs and Crime was one of a number of UN top officials who signalled this dramatic change of direction. He finally made absolutely clear that:

"The Evidence based public health approach is here to stay".

Surely the new UN position requires a major rethink of drug policy worldwide.

What does this mean for the UK? The Government need to adopt policies supported by evidence that they will reduce addiction, particularly among young people, and will reduce the harm caused by drugs and the drug control system. Three policies could be adopted immediately by the Government on the basis of evidence. The first is the decriminalisation of drug possession and use, as pioneered in Portugal all those years ago, and extensively evaluated and shown to be a success. It is interesting that all political parties in Portugal support the decriminalisation policy. The second is heroin treatment clinic programmes pioneered by the Swiss and, again, proven to be cost-effective in rigorous evaluations. The third is the legalisation and regulation of cannabis for medical use. I will concentrate on the third. Cannabis currently sits in Schedule 1—the schedule for dangerous drugs with no medicinal value, believe it or not. This has become unsustainable, and I would say laughable if it were not so serious. We have abundant evidence to support a change of that schedule. The reason for urgency is that the current policy is contrary to the human rights of hundreds of thousands of patients with severe chronic illnesses who we know could benefit from this change. About 10% of these people go to drug dealers but the rest just cannot face it. Should a very sick person risk arrest and being placed in a cell simply to get their medicine? The current position is also a terrible waste of NHS resources and inhibits research into the medicinal potential of this rather remarkable plant. I should make it clear that I have no personal interest in this issue. I have never smoked a cigarette and certainly not a spliff either. My only addiction is to chocolate and I am lucky; it is legal.

We now have a comprehensive and professional analysis of the research evidence proving that cannabis is not only a great deal safer than many prescribed medicines which it can replace, but works more effectively for some patients—not all—than prescribed medicines. If the Minister were not so ridiculously overworked, I would hope she would read the report of Professor Mike Barnes, honorary professor of neurological rehabilitation at Newcastle University, and Dr Jennifer Barnes, a clinical psychologist. The Barnes report looks at research evidence across the world and sets out those conditions for which there is now good evidence, through random control trials and other research, which makes very clear the efficacy of cannabis in treatment. These include chronic pain, including neuropathic pain, spasticity, nausea and vomiting, particularly in the context of chemotherapy, and the management of anxiety. Barnes also found moderate evidence of success in a range of other disorders and some evidence for including a further list of conditions, including drug-resistant childhood epilepsies. Barnes emphasised the need for more research. He certainly did not exaggerate the benefits of cannabis—very far from it; he rather underestimated the benefits. In order for that research to take place and for those improvements to be seen, we need a change in the schedule of cannabis.

Is the Minister aware that in early October the Medicines and Healthcare Products Regulatory Agency published its opinion that products containing CBD—one of the two primary ingredients of cannabis—should be regulated as medicinal products? The absolutely correct position of the medicines regulator does not sit easily with the Government's outdated cannabis schedule.

At present, many parents of children with treatment-resistant childhood epilepsies are buying CBD from private companies or on the web and, despite the risks, they find that it can have dramatic and positive results for their children. I have a video of a child who was suffering hundreds of seizures a day and was unable to do anything. He was expected to die within a week when his father went to his consultant, who agreed that the child should be given cannabis. That little boy remains alive. He has very few seizures—perhaps one or two a day—and is able to run about and play. I have had helpful discussions with the chairman and chief executive officer of the MHRA, who are keen to ensure that these severely ill children continue to gain access to their cannabis medicine. How can the Government continue to deny the medical value of cannabis?

The evidence for cannabis as a treatment for chronic pain, including neuropathic pain, is examined in detail in the Barnes report. One of the great benefits of cannabis compared with other drugs seems to be that the side effects are often very much milder or even negligible, in marked contrast to the many side effects of prescribed pain-relieving medicines. Cannabis can also help patients whose pain does not respond to prescribed medications at all. The Barnes report considers the pain-relieving qualities of smoked herbal cannabis, as well as the synthetic versions. Of course, smoked herbal cannabis is a much safer option than the synthetic variants. In studies where patients smoked cannabis with 8% to 9.4% of THC, it reduced pain significantly in 46% of them, with mild side-effects. Any doctor will know that that is a pretty good result.

I hope that others will talk about the growing number of countries and US states which already provide legal access to cannabis for medical purposes under regulations. If cannabis has no medical value, maybe the Minister can explain why Germany is passing a government-backed law legalising cannabis for medical use for 60 conditions. Professor Barnes pointed to only four conditions where he said there was good evidence. I would say that he was being very modest. How can the UK Government sustain that discredited position?

Our APPG inquiry into medicinal cannabis includes a recommendation that the UK adopt a system of regulation based upon the German model. This would involve rescheduling cannabis to Schedule 4, thus recognising its medicinal value, and introducing a system of licensing for producers and suppliers, with availability of cannabis through doctors' prescriptions. I ask the Minister to take this proposal forward in the

light of the new UN support for an evidence-based drug policy and the new Barnes report, which shows that we have that evidence.

7.43 pm

Lord Crickhowell (Con): My Lords, first, I thank the noble Baroness, Lady Meacher, for giving us the opportunity to debate this important subject and for her clear and comprehensive introduction.

I go to Mexico every year and have done so for many years. Perhaps that is why I have come to believe that the so-called war on drugs has been a catastrophic mistake. It has led in Mexico and elsewhere in the Americas to vicious gang warfare, murder, violence against officials, corruption and the accumulation of vast wealth by those involved, and it has done little to reduce the consumption of drugs worldwide. That is one reason why I have been a warm supporter of the APPG for Drug Policy Reform and its demand for evidence-based action.

We are holding this debate at a time when a rapidly growing number of countries are moving to a much wider legalisation of cannabis consumption than we are discussing this evening. During the recent United States elections, there were referendums that added four new states to the 24 that had already decided to legalise marijuana consumption. In this country, a committee in the other place has recommended that cannabis should be legalised. Its report refers to the UK's "dark ages" drugs policy. We are arguing tonight for the legalisation of only medical cannabis, and this debate comes a few days after the *British Medical Journal* urged doctors to push for legalisation, stating that doctors have "ethical responsibilities" to campaign for change.

We have already heard of the hugely important change in UN policy and that at the United Nations General Assembly Special Session held in April, both the US and the UN leadership rejected a moralistic and prohibitionist approach and called for all the proposed changes contained in the admirable report of the all-party group.

I add only one other thought. There is a great deal of evidence that, despite the present tight regulatory system, a great many people are using cannabis to relieve pain and to treat their own particular illnesses, and they are doing so in the knowledge that they are breaking the law. The noble Baroness referred to that. My daughter, Sophie Sabbage, in her book *The Cancer Whisperer*, describes a similar situation among those suffering from cancer who have not been fortunate, as I have been, to have their cancer cured by amazing surgery. She refers to treatments she has had in Mexico, reinforcing the orthodox treatments she had in this country. She writes that,

"it is so damn difficult, and in some cases impossible, to access those cancer protocols here in the UK … Interestingly I am now plugged into a semi-underground network through which I have been able to access some treatments in the UK, but it isn't easy, I have met fully qualified GPs as well as highly experienced health practitioners who have to fly under the radar in order to provide these services".

I am sure the same thing is happening with cannabis. We need the Government to move to a regime where it is not necessary to fly under the radar.

7.48 pm

Lord Rea (Lab): My Lords, I congratulate my noble friend Lady Meacher on keeping drugs and the law on the agenda—not only in this House but on the world stage. She has done much to encourage other countries and the World Health Organization to revisit the UN conventions on narcotics, as she has told us. Until the last few years these were regarded as virtually set in concrete in a prohibitionist mode. I speak of her as my noble friend because on this issue, her position is closer to mine than is that of my party.

My credentials for joining this short debate are, first, that for 30 years I practised as a GP in inner London, which has higher than average drug abuse levels, and, secondly, that 18 years ago I was a member of your Lordships' Science and Technology Committee, which was chaired by Lord Perry—Walter Perry—and looked into the medicinal use of cannabis. Now, that has been superseded by the Barnes report, mentioned by the noble Baroness. Things have certainly moved on internationally since our committee reported, but there has been little fundamental change in the UK, though several other countries have made cannabis—and other drugs—legally more available.

The Select Committee took careful account of the composition of cannabis and its effects, both beneficial and harmful. One important finding was that,

"no-one has ever died as a direct and immediate consequence of recreational or medical use".

In other words, it is a very safe drug. It can, however, have ill effects, one being that, rarely, it can precipitate psychosis. Our report considered that,

"there is little evidence that cannabis use can precipitate schizophrenia or other mental illness in those not already predisposed to it".

It is sometimes difficult to say which came first: cannabis use or psychosis. Heavy use, of course, may slow cognitive processes and impair concentration, and therefore driving, and heavy users may suffer academically. But short-term use appears to have no lasting ill effects. Some adverse effects, occasionally lung cancer, are due to the products of combustion in inhaled smoke, which frequently include tobacco.

Since ancient times, preparations containing cannabis have been used therapeutically for a number of symptoms. In particular, we noted how effective it sometimes is in relieving the painful spasms associated with multiple sclerosis, but it is not a cure for MS or any other illness.

To avoid the ill effects of inhaled cannabis a pure extract has been incorporated by GW Pharmaceuticals into an oral aerosol spray, Sativex, which now has a product licence. However, it is so expensive that NICE has disallowed it for prescription. Vaporisers for cannabis are available in the USA. The price is too high, but it is coming down.

The fact that there are some undesirable effects of this drug, and all other drugs, strengthens the case for these products to be decriminalised and made available on prescription or through regulated, licensed outlets. Their effects could then be monitored more closely and the strength and purity of the product be subject to scrutiny before a licence is granted. However, as things stand, and as the noble Baroness said, cannabis will continue to be used illegally for therapeutic as well

[LORD REA]
as recreational use in this country. It is illogical that patients should have to break the law in the UK to gain relief, when in several other countries they do not.

7.52 pm

Baroness Walmsley (LD): My Lords, I would like first to thank the noble Baroness, Lady Meacher, for the dedication she has shown to revealing and reversing the completely illogical, indeed cruel, position we have in the UK on drugs policy. I will focus my remarks on medicinal cannabis. I attended every meeting of the noble Baroness's inquiry into this. To me, the evidence in favour of a change in the law is overwhelming in terms of compassion, economics, public order, scientific progress and indeed logic. As the UN says, drugs are a health matter.

On the same day as the presidential election, two additional US states voted to legalise the medicinal use of cannabis. When we wrote our inquiry report, 24 states, plus DC and Guam, allowed such legal use under certain circumstances. Now, it is the majority of states. I read the words of an attorney from Florida who had been campaigning for the change. He said:

"Compassion is coming. This November, Florida will pass this law and hundreds of thousands of sick and suffering people will see relief. What Tallahassee politicians refused to do, the people will do together in this election".

And they did. I suspect that the same would happen here in the UK if the question were put to the vote.

While I was listening to the evidence during the inquiry, two things struck me particularly: the evidence from patients, and the scientific and medical evidence of benefits to sufferers of many different diseases. Nobody who heard the testimony of these patients and medical professionals could accept the positioning of cannabis in Schedule 1 among drugs that are very harmful and have no medicinal use.

One patient, having explained her symptoms and described how cannabis helped her, showed us two pages of A4 paper on which she had listed the conventional medicines she had been prescribed by doctors, along with the unacceptable side-effects she had suffered. It was a horrific list. Nobody reading it could have doubted that conventional medical services had done their best to help her, but nobody reading it would have tolerated the side-effects any more than she did.

Determined not to break the law, that patient had to get her GP's referral, go to the Netherlands several times a year, see a doctor there and get a prescription, collect the medicine, and make prior arrangements with Her Majesty's customs to ensure that she would not be arrested when bringing her medicine back—perfectly legally—into this country. This whole procedure cost her thousands of pounds and enormous effort—and all because successive Governments have resisted the overwhelming evidence that the benefits of laying down a legal framework for the provision of cannabis medicines vastly overtake any small perceived harms.

I hope that the Minister will not tell us that to raise this issue within government is above her pay grade. She is in a much more powerful position than I am. She is inside government and trusted by her colleagues. If she went back to her department and said, "Look here, we need to talk to the Department of Health about this and we need to do something", she would make her name as someone with an open mind who acts on the evidence. She would also be thanked by up to a million people who might benefit. Otherwise, perfectly law-abiding sick people are having to risk their reputation and their liberty by breaking the law in order to alleviate their pain. That cannot be right.

What is it about the UK that is different from 28 US states, Canada, Israel, Austria, Belgium, the Netherlands, Romania, Portugal, Finland, Italy, Switzerland, Spain, Australia, Chile, Colombia, Uruguay and, most recently, Germany? Why are we afraid of this medicine, which was used legally until the 1940s? The scheduling of cannabis medicines in Schedule 1, while Sativex is in Schedule 4, is a complete nonsense and contradictory, and most people know it. The Royal Society for Public Health put its finger on it in a recent report:

"Given the poor correlation between drug harm and classification, the current system risks sending misleading signals to the public about relative harm, and this may be contributing to avoidable risk".

Cannabis is a valuable medicine. Its legal use is a health matter for up to a million people and it should be treated as such. Will the Minister please go and talk to the Home Secretary and tell her the facts?

7.57 pm

Baroness Stern (CB): My Lords, first of all I thank my noble friend Lady Meacher for initiating this debate and also for her outstanding and very effective contribution over the past five years to the movement for reform of global drug policy. She is very well known on the world stage for her efforts and it is gratifying that a Member of your Lordships' House has been so very prominent. I too must declare an interest as an officer of the All-Party Parliamentary Group for Drug Policy Reform, and in that capacity I want to express my total support for the legalisation of cannabis for medical use.

In my brief remarks, I would like to concentrate on the implications of the conclusions of the UN special session for UK foreign and development policy and for the protection of human rights worldwide. The UN special session concluded that national drug policies should,

"fully respect all human rights and fundamental freedoms".

It proposed that the balance between law enforcement and harm reduction should prioritise harm reduction.

I therefore ask the Minister—I appreciate that she is very overworked and will understand if she prefers to write to me rather than reply in the debate—to assure the House that Her Majesty's Government never provide support, either directly or through multilateral agencies, to anti-narcotics law enforcement in countries such as Pakistan and Iran, where those convicted of drug trafficking face the death penalty. In the past, the FCO has made great efforts to ensure that United Kingdom money is not used when it might lead to a sentence of death. There was a Foreign Office document called *The Death Penalty: Policy on*

UK Justice Assistance, which provided guidance to those making decisions on how funding from the UK could be used. Does this document still exist? Has it been amended recently? Does it still guide those funding decisions?

My second point is about the impact of the conclusions of the special session on the policies of DfID and the implementation of the sustainable development goals. To quote the United Nations development programme,

"in many parts of the world, law enforcement responses to drug-related crime have created or exacerbated poverty, impeded sustainable development".

The description of Mexico given by the noble Lord, Lord Crickhowell, illustrates this vividly and accurately. At the special session of the United Nations in April, the Minister for the Cabinet Office, Oliver Letwin, said:

"We must ensure that our work is fully integrated with the Global Goals because the 2030 Development Agenda and our efforts to address drug harms are complementary and mutually reinforcing".

How is this being implemented? Can the Minister tell the House whether DfID is planning, for instance, in the countries where it works to put resources into policies such as harm-reduction measures and treatment as part of its support for the sustainable development goals?

8.01 pm

Lord Mancroft (Con): My Lords, I thank the noble Baroness not only for introducing this debate but for her impeccable timing in doing so when we are waiting with bated breath for the Government's revised drug strategy to be published.

I hope your Lordships will forgive me if I start my remarks by using the same words that I did when finishing our last debate on this subject, which is that it is uniquely not party political. In views shared across the whole House, there is broad agreement on the objectives of drug policy; where we differ is on how to achieve those objectives and how to balance the need to control supply with the better target of trying to reduce demand.

There have been two significant changes since we last debated this subject. First, the overwhelming evidence now shows us that the attempts to control supply have failed. We have been saying this for some years, but there is now hard evidence that they have failed, particularly in relation to cannabis. Secondly, this view is now the pre-eminent view. Whereas it was the view of the minority in the past few years, it is now, following the recent United Nations meeting in New York, the view of most people throughout the world. As has been said already, 28 American states, including California, and a number of European states are moving in the same direction—a direction which has been indicated by the Royal Society for Public Health, as the noble Baroness, Lady Walmsley, said earlier. An all-party report today in the House of Commons also indicated the same direction.

All these reports are saying that we do not want devolution but evolution of our policy based on evidence. The All-Party Parliamentary Group for Drug Policy Reform report, which has been referred to by many speakers, produces that strong, scientifically supported evidence. What steps are Her Majesty's Government taking towards the medicinal use of cannabis for the conditions we have already heard about, such as chronic pain, arthritis, insomnia, fibromyalgia?

This is not a movement that requires a matter of principle to be changed. Following representations from the royal colleges and a number of doctors, the Home Office Minister with responsibility for drug policy in 1953 told your Lordships that heroin was a uniquely effective pain killer for those with terminal cancer and that, as a consequence, Her Majesty's Government had decided to change their policy and that heroin was not going to be prohibited in the United Kingdom but was to be a controlled drug, as it is now, because it is the most effective drug for those particular conditions. The Minister in those days could not have known anything about the heroin addiction that was going to sweep this country over the next 40 or 50 years, but there has been little seepage of legal heroin into the black market. The Minister said, "It is both uncivilised and cruel for the Government to deny patients a drug that uniquely alleviates their suffering". My father was the Minister making that statement. I agree with what he said then and, if he was here now, he would agree with it too in respect of cannabis.

8.05 pm

Lord Maclennan of Rogart (LD): My Lords, I support the case of the noble Baroness, Lady Meacher, for legalising cannabis. It is a drug that helps and does not seem to harm. She has made the case very strongly. I note that the *British Medical Journal* has also called for the legalisation of illicit drugs. It is a source of expertise and is evidence that drugs can be helpful to those needing pain killers and could help stop illegalities. The international trade in drugs is colossal, particularly for heroin and cocaine. The current ubiquity of drugs in this country is a function of their illegal status.

I wish to draw attention to what is happening in Glasgow, where it is proposed that fixed rooms should be set up to enable people to inject under supervision, particularly heroin and morphine. Drug-related deaths in Glasgow so far this year amount to 345—quadruple the number of decades ago.

The nature of drug addiction is causing the international trade in drugs to be colossal. The ubiquity of drugs and the corruption and violence which illegality confers should be eliminated from society. The illegality of drug addiction spreads infection, and injecting equipment left in public areas is dangerous. They should be legalised.

Max Rendall wrote a book in 2011 called *Legalize: The Only Way to Combat Drugs*, in which he expresses the view that legalised drugs could be regulated and controlled. I wish to recommend this book to Ministers. The author is very knowledgeable about the problems in this area.

I am grateful to the noble Baroness, Lady Meacher, for bringing forward this debate.

8.09 pm

Lord Norton of Louth (Con): My Lords, I, too, congratulate the noble Baroness, Lady Meacher, on raising the question and I declare an interest as an

[LORD NORTON OF LOUTH]
officer of the all-party group. It is five years since I tabled a Question for Short Debate asking what consideration the Government had given to establishing a royal commission on the law governing drug use and possession. The timing was deliberate, coming 40 years after the UN Single Convention on Narcotic Drugs was promulgated and the Misuse of Drugs Act was passed.

I made two points by way of introduction. First, I stressed that I believe strongly in having evidence-based policy. As I said then, I am appalled at how much legislation is brought forward more on the basis of hope than evidence. Secondly, the best way to affect attitudes and behaviour is through education and persuasion. I repeat what I said then:

"The law alone cannot achieve change, and indeed it can be dangerous to rest on the law in place of education".—[*Official Report*, 9/3/11; col. 1673.]

I drew the distinction between drug use and prohibition. Prohibition can have and has had appalling consequences—a point made powerfully by my noble friend Lord Crickhowell. I advocated a commission or some other body of inquiry to examine the facts and to undertake an evidence-based inquiry.

The Minister replying to my question on that occasion said that the subject was one that excites disagreement. It may well do, but the only person who disagreed with me in the debate was the Minister. Everyone else who spoke, on all sides of the House, supported the case for review. In effect, what we were arguing for then is encapsulated in the call now by UN officials. It is crucial that the Government should recognise the problem as one of health, that we start from the problem of drug use and evaluate the evidence on the way to tackle the problem.

The danger is that the Government adopt a mindset that is resistant to change and, as a result of that mindset, are reluctant to consider dispassionately the evidence that does exist and are reluctant to commission evidence to help identify what needs to be done. Part of the reluctance appears to be a fear of public opinion. I think that fear is overblown and indeed not necessarily evidence based—but, in any event, what we need is what has been shown by some Governments elsewhere, not least on the American continent, and that is leadership to address what is a very real global and national problem.

I look forward to my noble friend Lady Williams confirming that the Government accept the need for evidence-based policy, for being as transparent as possible in sharing that evidence, and to hearing what the Government plan to do to acquire, evaluate and act on that evidence.

8.13 pm

Lord Paddick (LD): My Lords, I thank the noble Baroness, Lady Meacher, for this debate. Some 15 years ago, when I was a police commander, I suggested that the police should not arrest people for having small amounts of cannabis for personal use. Now, 15 years later, some things have changed. Police officers can now issue a fixed penalty for possession of cannabis or simply issue a warning on the street—effectively decriminalising possession for personal use.

When this House debated the Psychoactive Substances Bill, I moved an amendment to decriminalise possession of small amounts of all drugs for personal use, because in that legislation the Government did not seek to criminalise possession of small amounts of new psychoactive substances—"legal highs", as they were known. Many of these new psychoactive substances are more dangerous than the drugs listed in the Misuse of Drugs Act, so this made perfect sense to us. Others did not agree—but, as the noble Baroness, Lady Meacher, mentioned, another change from 15 years ago is that we now have a long-running example of what happens when possession of small amounts of all drugs for personal use is decriminalised, and when drugs are treated primarily as a health issue rather than a criminal justice issue.

It is very difficult to establish causal links between decriminalisation and what has happened in Portugal, but the reality is that Portugal's drug situation has improved significantly. HIV infections and drug-related deaths have decreased, while the dramatic rise in use feared by some has failed to materialise. Among Portuguese adults, there are three drug overdose deaths for every 1 million citizens compared with 44.6 per million in the UK. The use of legal highs is lower in Portugal than in any of the other countries for which reliable data exist.

So why, when the Liberal Democrats tried to decriminalise possession of small amounts of all drugs, did the Tory Government and the Labour Party oppose the move? Another thing I said back in 2002 was:

"Not being cynical but politicians always have this dilemma: do the right thing but if it's not popular and you lose votes, you lose power and then you cannot do anything. Do the popular thing, win votes and keep power and you could end up doing the wrong thing because there are more votes in it. Does that mean politicians make decisions on the basis of how many votes it will win/lose them or on the basis that it is clearly the right thing to do (or only when the two coincide)?".

I guess that some things have not changed. Can the Minister please consider asking her colleagues in Government to base drugs policy on evidence rather than prejudice and to treat drugs as primarily a health issue, not a criminal one?

8.16 pm

Lord Kennedy of Southwark (Lab): My Lords, like other noble Lords, I start by thanking the noble Baroness, Lady Meacher, for bringing this Question for Short Debate to your Lordships' House. In the time allowed it is not possible to cover all the points I would like to, or to respond to all the points made by noble Lords. I know that other noble Lords will be with me on this: I hope that for all government policy decisions the starting point is a reasoned, evidential base at the heart of what the Government promote as a policy. The noble Lord, Lord Paddick, referred to that, but the fact is that all three parties have failed that test over many years.

The Question before us concerns evidenced-based policies to promote public health and to place health rather than prohibition at the heart of our policies on drugs. Of course, we have two legal recreational drugs that can cause serious problems, namely tobacco and alcohol. I am fully aware of the debate about the

legalisation of cannabis and the contention that it is less harmful than the two legal drugs I mentioned. My position is that I would not legalise cannabis for general use. It may well be less harmful than alcohol or tobacco but that in itself is not a good enough reason.

I do, though, see the point that the Government should give careful consideration to the case for the use of cannabis or cannabis products as a medicine. As the noble Baroness, Lady Meacher, said, where there is medical evidence, the Government should consider the case for trials and consider rescheduling cannabis from Schedule 1 to Schedule 4. These trials would be with named patients only. There should be further research seeking to establish for which ailments cannabis could be an effective and inexpensive treatment.

With the passing into law of the Psychoactive Substances Act 2016, there is no criminal penalty for the personal possession or use of new psychoactive substances, such as the synthetic cannabinoid known as Spice. There has been considerable press coverage of the harmful effects of this product, and I recall a debate in the Moses Room with the noble Baroness, Lady Williams of Trafford, when this very subject came up. There is no criminal penalty for possession of this product, but it is still illegal to produce and supply the drug—criminal penalties still apply. There seems to me some inconsistency between the Government's policy on Spice, a synthetic cannabinoid, and that on cannabis itself. The Government should look at that carefully and urgently to get both products on the same footing. Maybe the noble Baroness can address that tonight. If she cannot, maybe she can write to me after the debate.

I turn to some of the points raised by noble Lords. I accept, as mentioned by the noble Lord, Lord Crickhowell, and my noble friend Lord Rea, that many people in the UK are using cannabis for the relief of pain and in doing so are breaking the law. The noble Lord, Lord Mancroft, made an important point in saying that what we want is not revolution but evolution on an evidential base.

The noble Lord, Lord Maclennan of Rogart, addressed the serious issue of drugs in Glasgow. It will be important to evidentially assess the programmes and the results of work being done to deal with the serious problems there.

The noble Lord, Lord Norton of Louth, made an important point that the Government should review these matters on the basis of evidence and not get themselves stuck and be unable or unwilling to move.

I thank the noble Baroness, Lady Meacher, for bringing this Question forward for debate and I look forward to the Minister's response.

Lord Mancroft: If the Government were to move in the direction that the noble Lord talked about, would Her Majesty's Opposition support or oppose the Government? That would make a huge difference to the Government's position.

Lord Kennedy of Southwark: If the noble Baroness were to come forward tonight and suggest what I just described, I hope we would support them.

8.20 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, that is good news, because somebody will agree with me tonight, I hope. I thank the noble Baroness, Lady Meacher, for securing the debate. I acknowledge the extensive work she has done in this area. Indeed, I thank all noble Lords, who have contributed very thoughtfully to the debate.

The Government used the UN General Assembly Special Session on Drugs to share our experience of delivering an evidence-based, balanced drug strategy within the UN drug conventions, and to strengthen international co-operation in tackling drug harms. The outcome document of the special session combines ambitious goals with operational recommendations that all Governments should consider implementing. The UK Government secured particularly helpful recommendations on our priorities on new psychoactive substances, proportionate criminal justice and comprehensive recovery.

We have heard that United Nations officials at the special session called for evidence-based policies that promote public health. These calls are fully in line with the Government's approach. The noble Lord, Lord Kennedy, can rest easy about agreeing with the Government's position. The Government are taking balanced action to prevent the harms caused by drug use. This includes educating young people about the risks, helping dependent individuals through treatment and supporting law enforcement in tackling the illicit trade. We are currently developing a new drugs strategy, working across government and with key partners, to identify what further steps we can take to tackle this issue.

We continue to take a broad approach to prevention, supporting investment in a range of programmes that have a positive impact on young people and adults. These programmes give them the confidence, resilience and risk-management skills to resist drug misuse. This includes the resilience-building resources available online, such as FRANK and advice services, as well as toolkits from Public Health England to support local responses.

Tough enforcement is a fundamental part of our drugs strategy, with action to restrict drug supply and reduce drug-related crime a key priority for law enforcement. We are tackling drug dealing on our streets, strengthening the border and combating the international flow of drugs to the UK to disrupt drug trafficking upstream.

Recovery remains at the heart of our approach. More adults are leaving treatment successfully compared to 2009-10. That can be only a good thing. The average waiting time to access treatment remains at three days. However, we recognise there is still further to go.

Drug treatment is invaluable to individuals, their families and the communities in which they live. It is vital that there is access to a range of options that can be tailored to individual need to provide the best possible chances of recovery. Such treatment should be provided alongside the wider recovery support essential to achieving and sustaining recovery, which includes access to training and employment, stable housing, and wider health services.

[Baroness Williams of Trafford]

The Government are taking a leading role on drugs policy at the international level. Steering international action to strengthen our domestic response will be a key element of the new drugs strategy. The Government used the special session to strengthen our global leadership in the international response to new psychoactive substances. Our comprehensive action on this issue in recent years has resulted in, first, the formation of the UK-led International Action Group on New Psychoactive Substances, a group of more than 30 Governments and international organisations which drives the international response; secondly, in the establishment of a global early warning system at the United Nations; and, thirdly, in the first two tranches of international controls on some of the most harmful new psychoactive substances. I will write to the noble Lord, Lord Kennedy, on the Spice/cannabis differentiation, because I will not have a chance to respond on that point tonight. We will continue to press the international community to implement the recommendations of the special session outcome document, including on new psychoactive substances. They include enhancing the global collection of data on the health harms that such substances pose.

My noble friend Lord Crickhowell, the noble Baroness, Lady Meacher, and the noble Lord, Lord Maclennan, and others spoke about alternative drugs policies in other countries. We have heard this evening about some great successes in other countries which implemented policies that are not part of this Government's approach, but we must be cautious when comparing the evidence between countries. Historical patterns of drug use, cultural attitudes, and policy and operational responses to drug misuse in a country will all affect levels of use and harm. Moreover, different countries have different means of collecting data, so it is often difficult to make direct comparisons.

Almost every noble Lord mentioned medicinal cannabis. I used to work with people who had multiple sclerosis—it was right at the beginning of the debate and what led to the development of Sativex. We recognise that people with chronic pain and debilitating illnesses are looking to alleviate their symptoms. It is important that medicines are trialled thoroughly to ensure they meet rigorous standards before being placed on the market and so that doctors and patients are sure of their efficacy and safety. The Misuse of Drugs Act 1971 enables the availability of controlled drugs which have recognised medicinal uses in UK healthcare, of which there are many. A clear regime is in place, administered by the Medicines and Healthcare Products Regulatory Agency—mentioned by the noble Baroness, Lady Meacher. This enables medicines including those containing controlled drugs such as cannabis to be developed, licensed and made available for medicinal use by patients in the UK. For example, Sativex has been granted market authorisation in the UK by the MHRA for the treatment of spasticity due to multiple sclerosis. It was rigorously tested for its safety and efficacy before receiving approval. The Medicines and Healthcare Products Regulatory Agency is open to considering marketing approval applications for other medicinal cannabis products should they be developed. As happened in the case of Sativex, the Home Office will consider issuing a licence to enable trials of any new medicine, provided that it complies with approved ethical criteria. The Government's view is that cannabis should be subject to the same regulatory framework as applies to all medicines in the UK—I do not think that noble Lords demurred from that premise. To do otherwise would amount to circumvention of a clearly established regime.

My noble friend Lord Mancroft talked about decriminalising drugs. I am afraid to say to him that we have no intention of doing that. They are illegal because scientific and medical analysis has shown that they are harmful to human health. A number of noble Lords cited decriminalisation in Portugal. Successes cannot be attributed to decriminalisation alone, but I recognise them. At around the same time as implementing decriminalisation, Portugal made changes to its approach to drugs misuse, including widespread implementation of harm reduction programmes and investment in drug treatment. It is extremely challenging to disentangle the effects of decriminalisation from those of these wider changes.

The noble Baroness, Lady Meacher, and the noble Lord, Lord Maclennan, talked about other approaches, for example in Switzerland and Glasgow, and the heroin-assisted treatment. There is evidence from the UK and other countries that supervised injections of diamorphine or pharmaceutical heroin in a medical environment as part of a structured treatment plan can keep patients in treatment and out of criminal behaviour. In addition to cutting crime, the treatment also drastically reduces the risk of overdose. The Government's commitment to that evidence is set out in both the 2010 drugs strategy and the 2016 modern crime prevention strategy.

We do not plan to change the law to enable drug consumption rooms to be established and operate in the UK because while there is international evidence that they can be effective in addressing the problems of public nuisance and reducing health risks in a very specific set of circumstances where open drug scenes presented a significant risk to public health, this is a complex and legally divisive solution to a problem that we do not have in the UK.

The noble Baroness, Lady Walmsley, talked about Schedule 1 of the Misuse of Drugs Regulations versus Schedule 4. Cannabis is controlled as a class B drug under the Misuse of Drugs Act 1971 and, given that it currently has no recognised medicinal benefits in the UK, a Schedule 1 drug under the Misuse of Drugs Regulations 2001. We recognise the value of important scientific research and the Home Office licensing regime allows that to take place in the appropriate controlled environment.

I am running out of time and will not be able to answer every single noble Lord's question. I will finish with the noble Lord, Lord Kennedy, because it is a quick answer. On the Spice question, there may be no possession offence under the Psychoactive Substances Act as the harms of such substances may not be fully assessed. However, once assessed and if proven harmful, substances will be controlled under the Misuse of Drugs Act, which includes an offence for possession.

I thank all noble Lords for their contributions. I have not had time to answer everyone so I will do so in writing.

Pension Schemes Bill [HL]

Committee (1st Day) (Continued)

8.33 pm

Relevant document: 6th Report from the Delegated Powers Committee

Clause 12: Continuity strategy requirement

Amendment 26 not moved.

Amendment 27

Moved by ***Baroness Drake***

27: Clause 12, page 8, line 2, after "charges" insert ", including any cap on those charges,"

Baroness Drake (Lab): My Lords, I will also speak to other amendments in this group. This amendment would require a continuity strategy should a triggering event occur to set a cap on the charges that can be applied to members' savings. Amendment 42 sets a similar requirement on an implementation strategy when a triggering event has occurred, and Amendments 28, 39 and 54 introduce an explicit provision that members' funds cannot be used in whole or in part to pay for the costs of any wind-up of a failing master trust. That provision is to apply to the continuity strategy when a transfer-out and wind-up is triggered, and when an unauthorised master trust, on or after 20 October 2016, is subject to a wind-up. Indeed, all the amendments in this group in my name and that of my noble friend Lord McKenzie are probing to test the strength of the scheme members' protection when a master trust fails.

The key function of the Bill in addressing weaknesses in the regulation of master trusts is to protect members from bearing increased—indeed, potentially unlimited—costs, so draining their savings pots when a master trust fails. The Bill introduces a prohibition provision, Clause 33, to protect members from funding increased costs in the event of a scheme failure. The prohibition is on both master trusts and the receiving scheme increasing charges, introducing new charges or charging a member for transfer during a specific period in which the scheme is at risk.

However, Clause 33 does not make it clear how and on what premise the charges it will be prohibited from exceeding will be set or determined in the first instance. To use my own simple language, members are protected by a prohibition from the imposition of additional charges above a charges baseline, either by the master trust or the receiving scheme on transfer in a triggering event, but it is not at all clear what that baseline is, how it is set or, indeed, if it is fair value. The amendments in this group seek a cap on the charges that can be applied to members' savings should a scheme fail, underpinned by the provision that members' funds cannot be used in whole or in part to pay for the costs of wind-up and transfer occurring as a result of a trust failing.

The parameters and restrictions on the use of members' funds to meet the cost when a master trust fails need to be set out more clearly in the Bill. Such a restriction is too fundamental to leave to regulations and/or the Pensions Regulator's discretion. To illustrate my point, the protection for members against meeting additional charges on wind-up and transfer in a triggering event are referenced in three main clauses. Clause 12 provides for a master trust continuity strategy, which is a requirement of authorisation, to set out how members' interests will be protected if a triggering event occurs, including the level of charges that can apply. Clause 27 requires a master trust to submit an implementation strategy, which must set out how members' interests will be protected when a trigger event actually occurs, including the levels of administration charges that will apply. Clause 33 sets out how the prohibition on increasing member administration charges will operate during the trigger event period, and provides that the Secretary of State may make regulations about,

"how levels of administration charges are to be calculated",

and,

"how to determine … the purposes for which charges are increased or imposed".

There is plenty of process here but nothing in Clauses 12, 27 or 33 informs what the actual quantitative level of member protection will be against increased charges on scheme failure; nor does the Bill say whether members will be protected from bearing, or will have to bear, any wind-up or transfer costs. Indeed, the level of protection for the member against increased charges on scheme failure can be revisited on three important occasions under different provisions in the Bill relating to triggering events. What is the Government's policy on the considerations that will be taken into account when the Pensions Regulator authorises the level of administrative charges to be borne by the member on scheme failure under Clauses 12 and 24 and Schedule 2? Are there any circumstances in which some of the administration charges or transfer costs arising as a result of a triggering event can be passed on to the member, and what will be the limit on the charges that can be passed on to them?

In the current drafting, there seems to be no join-up with the Occupational Pension Schemes (Charges and Governance) Regulations 2015, which incorporate the value-for-money assessment. There is nothing in the Bill to cover what happens if a scheme fails to comply with these regulations. Would it impact on the authorisation process or lead to the withdrawal of authorisation? It may be that these points will be covered off in new regulations, but it is unclear how regulations made under the powers in the Bill would knit together with the existing charges and governance regulations.

The regulations supporting Clause 12 on the continuity strategy, which sets out a requirement about the level of charges that will apply in a triggering event, are subject to the negative resolution procedure. I am conscious that we are bouncing this ball on negative and affirmative resolution procedure but, again, there is a prohibition on increasing charges and various incidents where the charges that cannot be exceeded are set out. Yet we have no sight of the draft regulations, so we do not know the Government's thinking on this. Again, this is an appeal as to why, in the first instance, the regulations should not be subject to the affirmative procedure.

This is an important matter that is at the heart of the level of protection the Bill seeks to provide to members. It is one thing to say that there is a protection,

[Baroness Drake]
but understanding what that protection is in quantitative and real terms is important. Because we have not seen the draft regulations and do not know the policy intention, that is difficult to assess. That is why Amendment 30 provides for the first regulations to be subject to the affirmative resolution procedure. Given the importance of this matter and the lack of detail before the Committee, why is it not appropriate to apply that procedure in the first instance?

Lord Flight (Con): My Lords, Amendment 29 and 40 are amendments to opposition Amendments 28 and 39. They would both add after "members' funds", ", beyond the normal capped pension scheme charges,".
The point is really very simple: without this change, the opposition amendments would have the undesirable —and I think unintended—effect of hampering the orderly exit of the sponsor. I am sure that is not the intention behind them.

The Minister of State, Department for Work and Pensions (Lord Freud) (Con): My Lords, Amendment 27 would require information on any charge cap to be included in a master trust's continuity strategy. I am grateful to the noble Baroness, Lady Drake, for making it clear that this is a series of probing amendments. I think it makes sense for me to go through what the process is on the continuity strategy.

One of the criteria for a master trust to be authorised by the Pensions Regulator is that it must have an adequate continuity strategy. That strategy is then kept under review on an ongoing basis. A continuity strategy is a document that addresses how the interests of the scheme members will be protected if, in the future, the scheme experiences a triggering event—an event that could put the scheme at risk. The strategy must include a section on the scheme's levels of administration charges in a manner that will be specified in regulations in due course, as well as any such other information as may be set out in those regulations. Our intention is that the regulations will set out the detail and manner of the information to be provided on the administration charges in the strategy. We want schemes to provide information such as the charge levels per arrangement or fund, any discounts they apply to charge levels and on what basis these discounts are made.

8.45 pm

The need for this information to be in the continuity strategy is driven by the requirements that will apply to the scheme at any later point in time if it experiences a triggering event. Following a triggering event the scheme must submit an implementation strategy to the regulator that sets out how it will implement its continuity strategy. The scheme will also be subject to new charge restrictions, including that member charges must not be increased after a triggering event has occurred. The information to be provided in the continuity strategy is therefore closely related to information on administration charge levels to be included in the implementation strategy under Clause 27(3), which in turn becomes relevant to the prohibition on increases in charges during a triggering event period under Clause 33.

Amendment 27 would mean that, as well as setting out the levels of administration charges in the continuity strategy, the strategy would specifically need to include information on any cap on those charges. While I concur that it is important for it to be clear whether any charge cap applies, I am concerned that this amendment duplicates provision elsewhere and as such is unnecessary.

The cap is an annual one at 0.75% or an equivalent combination charge on the value of the member's rights in the default arrangement. Let me confirm, just in case any question remains on this matter, that this charge cap applies to master trust schemes in the same way that it applies to other occupational pension schemes. In addition, the existing regulations also place requirements on trustees relating to the assessment and reporting of charge levels. The statement must be made available and can be requested by members. Taken together, these existing regulations specify the charge cap requirements and enable the reporting of information about charges.

The provision in the Bill at Clause 12 is different from the legislation providing for the cap and for the reporting of charges in the annual report—and it has different objectives. The requirement about charges in the continuity strategy is specifically focused on enabling the charges to be articulated in a manner and form which will work for the later requirements on master trusts that have experienced a triggering event. Stating the charge cap in Clause 12 would seem to be seeking to meet a different objective. It is the information on charges in the implementation strategy that is essential for the regulator. This information means that the regulator is able to check that members are not being charged more than they should be if the scheme enters a triggering-event period. Adding a requirement to state the charge cap would seem to be aiming at a different objective.

Amendment 28 would require a scheme's continuity strategy to demonstrate that members' funds in a scheme cannot be used in whole or part payment of the cost of winding up the scheme. Amendment 29, tabled by my noble friend Lord Flight, would seek to limit that amendment to members' funds that were available through charges in excess of the existing legislative cap. The Government have sympathy with the noble Lords' objectives; members' funds should be protected, as far as possible, in the event that a scheme has to wind up. That is why we have made provision in the Bill to protect members from excessive charges when a triggering event happens. In summary, Clause 33 prohibits trustees imposing administration charges at levels above those set out in the implementation strategy during a triggering-event period.

In relation to how we see this prohibition under Clause 33 working with the existing legislative cap under the Occupational Pension Schemes (Charges and Governance) Regulations 2015, the situation is essentially the same. In relation to a default arrangement in an automatic enrolment master trust scheme, the normal charge levels would have to be at or under the cap of 0.75% and could not be increased during a triggering-event period. Once a triggering event happens, the prohibition under Clause 33 kicks in and effectively supersedes the requirement to stay at or under the cap

during a triggering-event period. The levels of charges, whether a member is invested in the default arrangement or not, cannot be increased. For this reason, we consider that Clause 33 works to provide proportionate and effective protection.

As my noble friend said, Amendment 29 seeks to build on Amendment 27 by limiting it. We consider that the Bill, particularly Clause 33, already provides effective and proportionate protection for scheme members. Amendment 30 would require the first regulations to be made under Clause 12, on the continuity strategy, to be subject to the affirmative resolution procedure. As I have already said, we will go away and consider our strategy on putting out those regulations. Amendment 39 seeks to make an addition to what will be covered in the regulations that must be made under Clause 24 by requiring them to prohibit the use of member funds to pay for the costs of transferring the members out of the master trust and winding it up. Amendment 40, in the name of my noble friend Lord Flight, takes a similar position but makes an adjustment to that addition.

I turn to Amendment 37, in the names of the noble Lord, Lord McKenzie of Luton, and the noble Baroness, Lady Drake. Clause 24, and the regulations to be made under it, set out the detail of continuity option 1 and the requirements in relation to it. Continuity option 1 is where a master trust has to transfer its members out and wind up. To protect the rights that members have accrued in the scheme it is necessary that these rights are transferred to alternative schemes or pension arrangements. Clause 24 therefore requires the trustees of the scheme to identify a master trust to which members' rights and benefits can be transferred. Our aim in Clause 24, and related clauses, is that members will continue to save in a pension, despite the master trust of which they are a member experiencing a triggering event which results in the scheme having to wind up. In this situation, the Bill requires that members are transferred out to an authorised master trust, and continue to save with as little disruption as possible. That is clearly important for their retirement.

Amendment 39 seeks to require the regulations that will be made under Clause 24 to include additional provision to prohibit the use of member funds to pay for the costs of transferring the members out of the master trust and winding it up. We have expressed sympathy with the aim of protecting members' funds, so far as possible, in the event that members' accrued rights and benefits are transferred out of the scheme. Indeed, to some extent, the Bill already makes provision for a prohibition to cover this. However, the mechanics of how this works are slightly different, so I will explain them.

When we discussed Clause 8 I explained how it provides that in order to be satisfied that a master trust is financially sustainable, the Pensions Regulator must be satisfied that the scheme has sufficient financial resources to meet the costs of complying with the duties in Clauses 20 to 33. That includes, among other things, the costs of transferring members' rights and benefits out and winding up the scheme. Clause 33 already puts in place protection which has a similar objective to this amendment. Once a triggering event has happened, the trustees are prohibited from increasing charges above certain levels, and these will need to be set out in a section in the implementation strategy. As for what those levels are exactly, as I mentioned in relation to Clause 12, Clauses 27 and 33 enable the Secretary of State to make regulations in relation to these administration charges. Clause 27(4) allows regulations to set out the manner and a specific date for those levels. Clause 33(4)(a) allows regulations to set out how to calculate the administration charge levels for the purposes of the prohibition under Clause 33, including those levels set out in the implementation strategy.

We intend for these levels in the implementation strategy to be scheme-specific and calculated in relation to each investment arrangement in the scheme by looking back over a certain period of time and taking into account any discounts in each arrangement. The intention is that these levels will be set according to existing charge levels in the scheme before the triggering event happened and will be based on the charges that members were paying towards the normal running of their scheme in previous years. The levels will need to be calculated in a manner specified in the regulations. In this way, the existing levels in the scheme will effectively be fixed once a triggering event happens and cannot then be increased. The intention is that members will not pay any more than they did when the scheme was operating normally.

Under Clause 33(1)(c) there is a specific prohibition in relation to charges being imposed on or in respect of a member in consequence of leaving the scheme. That covers the members who are transferred by the trustees to the scheme that the trustees have identified under continuity option 1. It is worth noting also that these protections under Clause 33 are in place for the duration of the triggering event period—and so in the context of continuity option 1—until the scheme is wound up.

Amendment 40 seeks to make an adjustment to the additional prohibition. As described when I talked about Amendment 39, the intention is that members will not pay any more than they did when the scheme was operating normally so the amendment is not required.

Amendment 42 would require information on any charge cap to be included in a master trust's implementation strategy. The implementation strategy must include a section on the scheme's levels of administration charges in a manner that will be specified in regulations in due course, as well as any such other information as will be set out in regulations. Again, I shall not repeat how Clause 33 will work.

The amendment would mean that as well as setting out the levels of administration charges in the implementation strategy, the strategy would specifically need to include information on any cap on those charges. While it is important for it to be clear whether any charge cap applies, I am concerned that the amendment duplicates provision elsewhere and as such is unnecessary. Existing regulations specify the charge cap requirements and enable the reporting of information about charges.

[LORD FREUD]

Amendment 54 seeks to provide that, in certain circumstances, costs incurred by the scheme should not be borne by the members. These circumstances are where a master trust that has not been authorised by the Pensions Regulator experiences a triggering event and the trustees either decide to wind up the scheme or are required to do so. Paragraph 7 of Schedule 2 provides that in those circumstances, where no other party is liable for the costs that the scheme incurs during the triggering event period, which includes taking into account the prohibition under Clause 33, the scheme funder is liable. It is appropriate that the scheme funder is made liable for the costs that the scheme incurs during the triggering event period where no other party is liable, as they are the person liable to provide funds for the scheme and entitled to receive profits from it.

Once the new authorisation regime for master trusts comes into effect, in order to be authorised, schemes will need sufficient financial resources to be able to pay for the running of the scheme for at least six months and for the costs of winding up the scheme and associated costs. The intention is that the charge levels in the implementation strategy, the detail of which will be set out in regulations in due course, will look backwards over a period of time before the triggering event happened, as I have already described. We believe that by preventing an increase in charges if there is a triggering event, there will be effective and proportionate protection for scheme members.

If there are any points that I have not dealt with, I shall pick them up. On charges on Governments, the 2015 regulations set out a requirement on trustees to ensure that members are getting value for money on charges. With that, I think I have dealt with all the issues raised by the noble Baroness. I accept that that was a probing amendment and I am grateful for this opportunity for discussion. On that basis, I hope I have given noble Lords comfort and invite the noble Baroness to withdraw her amendment.

9 pm

Baroness Drake: I thank the Minister for his detailed reply. I should be honest and say that I do not think that I have absorbed all the detail that he presented, and I will read the *Hansard* in detail to follow it through. In my defence, as one would expect in preparation for a Bill such as this, I spoke to pension lawyers, and there was a clear view that the parameters and restrictions on the use of members' funds to meet the costs when a master trust fails were unclear and needed to be set out more clearly, so I am not alone in not understanding exactly how the prohibition clause works, and therefore what quality of protection is afforded. I simply say that others are unclear what the Bill provides.

I took one or two things from what the Minister said. The information charges provided on the implementation strategy are key. They are the driver against which it is assessed. It is on additional charges that one applies the prohibition; it identifies the charges in the implementation strategy which it is prohibited from exceeding. That needs some reflection.

I was a little confused by one point in the Minister's response. He referred to default funds. Of course, the cap on default funds is 75 basis points, but the nature of his reply was that if the scheme was running a default fund on 50 basis points, one could rise to the cap to fund the administration charges. Reassurance on that point would be really helpful.

Lord Freud: I hope that I made it absolutely clear that we will look back at what was actually being charged to ensure that it was an annual effective rate of 0.5%. There is no space to try to get the next 0.25% once a triggering event has happened. You are left at the level at which you have been charging historically, and there will be a way of assessing that rate, which means that both the original amendment and my noble friend's amendment to it fall away, because there is another method of maintaining the level of charges.

Baroness Drake: I thank the Minister for that clarity; that is quite reassuring in respect of one point, but I think that my noble friend and I will probably want to reflect on the detail of the Minister's statement. It is also helpful that he has confirmed that the implementation strategy information charges are key in deciding the charges and the prohibition that applies. We will reflect on what is in *Hansard*, but I beg leave to withdraw my amendment.

Amendment 27 withdrawn.

Amendment 28 not moved.

The Deputy Chairman of Committees (Viscount Ullswater) (Con): I cannot call Amendment 29, as it is an amendment to Amendment 28.

Amendment 30 not moved.

Clause 12 agreed.

Clause 13 agreed.

Amendment 31 not moved.

Clause 14: Requirement to submit annual accounts

Amendment 32

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

32: Clause 14, page 8, line 29, at end insert "annual statement and"

Lord McKenzie of Luton: My Lords, I beg to move Amendment 32 and shall speak also to Amendments 33 and 34. I shall be brief. We have dealt earlier with amendments relating to communicating and engaging with members. These amendments deal specifically with the requirements to ensure that an annual statement must be submitted to the Pensions Regulator, together with the scheme accounts. The annual statement for these purposes is that required by the 2015 DC regulations, with particular reference to relevant multi-employer schemes.

The requirement to produce an annual statement—the chair's annual statement—although supported by the trustee board, is part of the Pensions Regulator's DC code. The clause is designed to ensure that the Pensions Regulator has sufficient information about the master trust scheme to know when a scheme should be required to submit a supervisory return. I beg to move.

Lord Young of Cookham (Con): My Lords, after some five hours of debate there is now a glimmer of hope for one of the amendments moved by the noble Lord, Lord McKenzie. Its intention appears to require the trustees of an authorised master trust scheme to submit the scheme's annual governance statement to the Pensions Regulator each year.

The annual governance statement, sometimes known as the chairman's statement, which trustees of most money-purchase occupational pension schemes are required to produce, provides information on the scheme's compliance with governance measures such as the charge cap. It sets out, among other things, the level of charges in the scheme and the trustees' assessment of the extent to which these represent good value for members.

I understand why this amendment may have been tabled, and I agree that it is important for schemes to operate transparently and demonstrate that they represent good value for money for members. This information would indeed be valuable to the regulator in its assessment of the master trust against the authorisation criteria. However, I have reservations about whether the approach, as drafted, represents the best way of achieving this. From a drafting perspective, there is a risk in making a provision of this kind in primary legislation which relies on a reference to a provision in regulations—in this case the Occupational Pension Schemes (Charges and Governance) Regulations 2015. Should those particular regulations be amended in the future—for example, so that the statement is no longer required under the same specific provision—there is a risk that this provision of the Bill would no longer have the desired effect.

A safer approach is to make use of the existing provision in the Bill, which enables regulations to specify that the regulator may require that further information is submitted to it. That provision is in Clause 15(2). I can confirm that it is intended that the provision of the annual governance statement to the regulator will be dealt with in these regulations by enabling the regulator to require the statement to be included in master trusts' supervisory returns. We will of course consult on these regulations and we cannot confirm the final content until the consultation is concluded. I hope that I have explained to noble Lords that I resist the amendment not because I disagree with it but because there is a better way of getting there. The Bill already allows equivalent provision to be made in a manner more likely to secure the desired outcome in the long run. Against that background, I hope that the noble Lord will withdraw his amendment.

Lord McKenzie of Luton: My Lords, I am grateful to the Minister for that response. I thought for a moment that the glimmer of hope was going to be completely snuffed out, but I am pleased to know that it has not been. I accept the point about drafting and will look forward in due course to seeing this in the regulations. Having said that, I beg leave to withdraw the amendment.

Amendment 32 withdrawn.

Amendments 33 and 34 not moved.

Clause 14 agreed.

Clause 15 agreed.

Clause 16: Duty to notify Regulator of significant events

Amendment 35

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

35: Clause 16, page 10, line 9, leave out "negative" and insert "affirmative"

Lord McKenzie of Luton: My Lords, I shall speak also against Clause 16 standing part of the Bill. The amendment is an alternative formulation that requires the affirmative procedure to operate for the regulations. We touched on this issue earlier this evening. The clause imposes a duty on a range of persons involved in running a master trust to give notice of the fact that a "significant event" has occurred. Civil penalties can be applied to anybody failing to comply. The only hint of what might constitute a significant event is what the Secretary of State sets out in regulations. No hint is given in the Explanatory Notes to the Bill. The information provided to the Delegated Powers Committee simply refers to a significant event being one that might affect the ability of the scheme to meet the authorisation criteria, such as a change of trustee or scheme administrator.

As the Delegated Powers and Regulatory Reform Committee pointed out, the delegated power confirmed by Clause 16(3) is a very wide one. It emphasised that the definition of what constitutes a significant event is fundamental to determining the duty imposed by Clause 16. It says that the width of the power appears to be needed because the Government have not yet decided on the policy or purposes for which the power is to be used. Its conclusion is that the power is inappropriate in the absence of any convincing reasons to justify its scope. We agree that as things stand the Government have more work to do to justify the change in the clause. I beg to move.

Lord Freud: I will begin by explaining why it is important that the clause stands part of the Bill, and then I shall set out my thoughts on the proposed change in the parliamentary scrutiny procedure.

Clause 16 addresses one of the requirements that will be placed on a master trust scheme once it has been authorised. One of the great strengths of the authorisation regime is that it is an ongoing system. This means that, in order to continue operating in the market, the Pensions Regulator must remain satisfied that the master trust continues to meet the authorisation criteria. This makes it particularly important for the Pensions Regulator to remain informed about the scheme. Indeed, I hark back to our discussion a little earlier about whether there should be someone to compensate as a last resort. It is really important that we make sure that the Pensions Regulator knows what is happening in schemes. That is one of the key ways in which to make that happen.

The regulator will collect information from authorised master trust schemes on a regular basis through a combination of existing requirements on occupational pension schemes and new requirements on authorised master trust schemes, introduced as part of the Bill.

[Lord Freud]

For example, all occupational pension schemes are already required to submit an annual scheme return to the Pensions Regulator and, under Clause 15, master trusts will be required to submit a supervisory return as well. In addition, Clause 14 introduces a requirement on the trustees of master trust schemes to submit the scheme's annual accounts, and on the scheme funder to submit its accounts to the Pensions Regulator. These returns allow the Pensions Regulator to collect information from schemes on a regular basis in order to determine whether they still meet the authorisation criteria.

This clause provides that the Pensions Regulator must be notified in writing if significant events occur in relation to an authorised master trust scheme. The Secretary of State, following consultation with the industry, will set out in regulations what constitutes "significant events" for the purposes of this clause. These might include, for example, change of scheme trustee, change of scheme administrator, changes to the continuity strategy or changes to the business plan. The Government intend that the events which will be prescribed as significant events will be events of the type which the regulator would need to be made aware of promptly due to the potential impact on the scheme's authorised status or because they are indicators that support or intervention may be required.

To be clear, the occurrence of a significant event in a master trust scheme will not necessarily affect the ability of the scheme to meet the authorisation criteria. It just may have such an effect or it may be a warning sign. For example, a scheme may have a change of trustee. As the fitness and propriety of a trustee is linked to the authorisation criteria, the Pensions Regulator must be informed of this change so that the new trustee may be assessed against the relevant standards. The new trustee may well meet the required standards, in which case the scheme's authorisation status will not be affected—but there could be an impact. A civil penalty will apply to a person who fails to comply with this reporting requirement. For that reason, it is important to be as clear as possible about who will be subject to this requirement in the Bill. This clause therefore lists the persons subject to this requirement in subsection (2). Further persons may be listed in regulations.

There is a precedent for this requirement. Section 69 of the Pensions Act 2004 provides that key persons involved in the running of defined benefit occupational pension schemes must report the occurrence of certain events to the Pensions Regulator. That provision was made to warn the Pensions Regulator that such a scheme may require the support of the Pension Protection Fund. The provision in this Bill is made to warn the Pensions Regulator that an authorised master trust scheme may need support or intervention or be at risk of not meeting the authorisation criteria. This provision will protect scheme members and it will assist the Pensions Regulator to carry out its functions. That is why it is important that this clause stands part of the Bill.

Amendment 35 concerns the affirmative as opposed to the negative procedure. We have discussed that and we will also consider it in this context. On that basis, I hope that the noble Lord will see fit to withdraw both his opposition to the clause and his amendment. I hope that I have provided clarity on the wider purpose of Clause 16 and I commend it to the Committee.

9.15 pm

Lord McKenzie of Luton: I thank the Minister for that response. I think we understand what the intent of this provision is. Obviously, the persons to whom this obligation applies are listed in detail in the Bill. Why, therefore, is it not possible to list at least some examples in the Bill—for example, a change of scheme trustees—as one of the significant events which might require action? There is silence on that side of the equation. However, there is a list of persons who are subject to this provision.

Lord Freud: I think the reason is that it is pretty odd to have a hybrid approach to a list of requirements some of which are in the Bill and some in regulations. We are looking to put them all together in a coherent way in regulations, which we will consider how best to introduce to the House.

Lord Kirkwood of Kirkhope (LD): My Lords, has any consideration been given to a right of appeal against a civil penalty of this kind, which looks like a substantial potential fine? Who is to judge this? For example, whose duty is it to say that the trustees have changed? It could be any of the other trustees and the administrative fine could be imposed on any one of them at random. There needs to be some kind of due process about substantial fees of this kind landing out of the blue on people who may not bear the main brunt of the significant event over which they are being arraigned.

Lord Freud: The noble Lord has opened himself up to a letter from me.

Lord McKenzie of Luton: My Lords, I think we need to read the record. In the meantime, I beg leave to withdraw the amendment.

Amendment 35 withdrawn.

Clause 16 agreed.

Clauses 17 to 21 agreed.

Clause 22: Notification requirements

Amendment 36 not moved.

Clause 22 agreed.

Clause 23 agreed.

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

Amendment 37

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

37: Clause 24, page 17, line 3, at end insert—

"except where the Pensions Regulator is satisfied that continuity is best achieved by the substitution of a new funder."

Lord McKenzie of Luton: I shall speak also to Amendment 38. Amendment 37 seeks to probe an additional route to continuity. As the Bill stands, where trustees have chosen, or are required, to pursue continuity option 1, they must identify one or more

master trust schemes to which members' accrued rights and benefits are proposed to be transferred. Continuity option 2—an attempt to resolve the triggering event—is a route to be determined by the trustees, and not, seemingly, the Pensions Regulator. It is understood that in some circumstances a route to achieving continuity would be to change the scheme funder at the initiation of the Pensions Regulator as an alternative to transferring out or winding up a scheme. On the face of it, the regulation-making powers of Clauses 24(3)(a) and (b) do not seem to cover the position, but perhaps the Minister will tell us how, or indeed whether, this outcome can be accomplished.

Transferring the responsibility for a master trust to a new scheme funder could provide a quick answer to a collapsing master trust and would fit in with what happens with standard occupational schemes where it is wished to avoid having to wind up the whole scheme if a scheme sponsor becomes insolvent. Changing the scheme funder could be an easier solution that costs less and helps members because it keeps the scheme intact and avoids unnecessary investment transition costs and expenses for the members. Does the Minister agree that this opportunity should be available and, if so, can he put on the record how it might be accomplished?

The purpose of Amendment 38 is to highlight circumstances under continuity option 1 which require a transfer out and winding up and for members' accrued rights and benefits to be transferred. Notwithstanding regulations which might require transfers to alternative schemes or the right of employers or members to opt out of a proposed transfer, what is the position if the trustees simply cannot identify a transferee scheme? How is continuity option 1 to proceed? It is accepted that the focus of the Bill is just the money purchase component of a master trust but, if other benefits are provided, what is the position regarding these and how are they to be covered by other legislation and regulations? I beg to move.

Baroness Altmann (Con): My Lords, I want to raise an issue which is very relevant to this point. As the Bill will, rightly, require continuity strategies for the event of failing master trusts, I ask the Minister to consider introducing measures that will facilitate bulk defined contribution pension transfers. At the moment, the bulk transfers are governed in a way that would be suitable for defined benefit schemes rather than defined contribution schemes. It seems that we have an opportunity to disapply Regulation 12 of the 1991 preservation regulations and to introduce measures in this Bill to directly facilitate defined contribution pension transfers, which could also cut the costs of transferring across.

Lord Young of Cookham (Con): My Lords, I am grateful to the noble Lord, Lord McKenzie, for proposing his amendment. I am afraid that I am back in the default mode of resisting.

Before I address the amendments, I say to my noble friend Lady Altmann that I would like to reflect on what she said about the transferability of defined contribution pots and perhaps write to her, because I am not sure that it directly arises from the two amendments before us.

Clause 24, and the regulations to be made under it, sets out the detail of continuity option 1 and the requirements relating to it—where a master trust chooses or is required to transfer out its members and wind up. This option would be pursued where a master trust scheme could no longer satisfy the regulator that it met the authorisation criteria and had its authorisation withdrawn or refused, or where, for any other reason, it could no longer continue to operate and the trustees chose to pursue continuity option 1 rather than resolve the triggering event and keep the scheme running.

To protect the rights that members have accrued in the scheme, it is necessary that these rights be transferred to alternative schemes or pension arrangements. Clause 24 therefore requires that under option 1, the trustees of the scheme must identify a master trust to which members' rights and benefits can be transferred. Then the trustees have to notify members and employers of the transfer, as well as of other information that will be set out in regulations.

The aim of Clause 24 and the related clauses is that members will continue to save in a pension despite the master trust of which they are a member experiencing a triggering event that results in the scheme having to wind up. In this situation members should be transferred out to an authorised master trust and continue to save with as little disruption as possible. We want to encourage and facilitate the continuity of pension saving. Therefore, when a master trust is going to close, the provisions in the Bill will mean that members have the reassurance that, if they do not make an active decision to go elsewhere, they will become a member of an alternative master trust that has been authorised by the Pensions Regulator.

Amendment 37 provides that where the trustees have the choice, and have decided to pursue continuity option 1, they can do so, except where the Pensions Regulator decides that continuity of saving for members would be best achieved by the substitution of a new scheme funder. I think that the noble Lord, Lord McKenzie, was seeking to give the regulator some sort of power to require the trustees to follow continuity option 2 instead of continuity option 1, where the trustees had chosen the latter. However, in effect the amendment would give the regulator the power to exempt a scheme from fulfilling the requirements under continuity option 1 where the trustees have decided or are required to pursue this option and where the regulator is satisfied that continuity is best achieved by the substitution of a new scheme funder. I see real difficulties in what the noble Lord has proposed.

Trustees are responsible for running and managing their scheme and making decisions in relation to it. They have a fiduciary duty to act in the best interests of the members of their scheme—a point that the noble Lord, Lord Kirkwood, made during our discussions. This amendment would effectively allow the regulator to second-guess and overrule trustees and to make a decision about a pension scheme. This would be a fundamental change to the principle that trustees have responsibility for managing their scheme. We do not think such an intervention by the regulator would be appropriate.

[Lord Young of Cookham]

The option of finding a new scheme funder, as proposed by the noble Lord, is already open to trustees as a means of resolving the triggering event and continuing. Depending on what triggering event the scheme experienced, there could be a variety of ways of resolving it. We consider it important not to limit these, but to give trustees the freedom to resolve the event and the regulator the power to decide whether it is satisfied that the triggering event has been resolved. Where the sourcing of a new scheme funder is the most appropriate resolution of a triggering event, as suggested by the noble Lord, it should be up to the trustees to identify this funder. It should not be the Pensions Regulator's responsibility to decide what the resolution method should be, for example, that the method should be a new scheme funder, or to source that funder. That is not the regulator's role and it would be overruling the trustees, who rightly have ultimate responsibility for the scheme and its members.

We consider it important that any resolution of the triggering event and continuation of the scheme be subject to the full requirements of option 2. These requirements include the preparation of a comprehensive and detailed implementation strategy by the trustees, having certain safeguards in place for members and employers, additional support and assistance for them, and greater protection for members. Further, there is oversight of the adequacy of the strategy by the regulator.

We agree that where a master trust has experienced a triggering event, a new scheme funder could be identified and could be the most appropriate resolution of a triggering event. However, the Government believe that it is the trustees' responsibility to make decisions for the scheme, and that if they want to resolve the triggering event by finding a new scheme funder, they should go down the route of continuity option 2.

Amendment 38 makes two additions to what will be covered by the regulations. The first part of the amendment would require the regulations made under this clause to set out what happens where the trustees have not been able to identify a master trust into which their members will be transferred. As the Bill makes clear, there will be a comprehensive set of regulations under Clause 24 that will cover many areas. These regulations will cover members' right to transfer to a scheme of their own choosing, if they do not wish to transfer to the trustees' choice of scheme. Members could also take up other pension options open to them, where relevant. Where a member is in receipt of a pension from the failing master trust, they will have the right to transfer their benefits to an alternative appropriate arrangement. For example, this could include a draw-down arrangement or the purchase of an annuity.

9.30 pm

Where members do not exercise this right, employers can choose an alternative authorised master trust from that selected by scheme trustees for their current employees to be transferred to. It is intended that the regulations will impose a duty on employers and the trustees to inform members where employers select an alternative master trust. This will ensure that members are kept informed, and know where their rights have been transferred and which scheme they will be saving in in the future. The regulations will also set out that if members and employers do not make alternative arrangements, members will be transferred to the master trust selected by the trustees.

From our engagement with the master trust market we are aware that a number of schemes will be interested in taking on the members of other master trusts that fail. Many master trusts operate on a model that is based on scale. In some cases this is to generate a level of income which makes them profitable. It means that where there are a number of members who the scheme has not actively had to source itself, schemes are particularly interested in taking them on. Also, from our discussions with master trusts, we are aware that they are keen to demonstrate the reliability of master trusts and for members to have confidence in them as a vehicle for pension saving. There may be other motivations as well which mean that master trusts are eager to take on other schemes' members. While we cannot guarantee that several master trusts would be looking to take on the members of any particular trust that has failed or decided to exit the market, we are confident that there is adequate provision within the market overall.

We think it is essential that any members who are being transferred should go into a scheme that has been authorised by the regulator, and when the regulator comes to implement the authorisation regime it will be conscious of the need for there to be schemes available that have been authorised into which members can be transferred. We anticipate that master trusts believe that they will pass the authorisation requirements relatively easily and will want to apply for authorisation as soon as they are able. While I appreciate the concerns, our interaction with the master trust market leads us to believe that there will be suitable schemes available into which members can be transferred when their schemes fail.

The second part of Amendment 38 would require the regulations to set out what would happen to any non-money purchase benefits where a master trust which has mixed benefits is going to transfer the money purchase benefits out of the scheme and cease to operate in respect of those benefits. We have had some discussion relating to our approach in relation to non-money purchase benefits in master trusts, and there is already extensive legislation in relation to non-money purchase benefits covering areas such as scheme funding, transfer and wind-up. This legislation will continue to apply to non-money purchase benefits in master trusts. We do not want to duplicate or create complications in relation to that existing legislative framework. For that reason, we do not think it is appropriate that the continuity strategy should make provision about what is to happen to the non-money purchase benefits in the scheme.

Perhaps I may have another shot at responding to my noble friend Lady Altmann. There will be specific bulk transfer provision for master trusts that are following continuity option 1. That will be made by regulations under Clause 24. It will not have the normal requirements on defined benefit schemes, such as an employer link

between the two schemes. I hope that is of some help to my noble friend, and that the noble Lord will consider withdrawing his amendment.

Lord McKenzie of Luton: I thank the Minister for his response. Working backwards through our amendments, I think that in referring to the second paragraph of Amendment 38,

"dealing with benefits other than money purchase benefits",

he said that there is legislation in place which in a sense covers those situations. Can we be clear—perhaps he would care to write to me and to my noble friend Lady Drake—that there is a perfect fit of that regulation in those circumstances where there is a master trust with money purchase benefits and other benefits, just to make sure that it fits those precise circumstances? I think that we remain to be convinced on that point.

On the point about continuity under option 1 or option 2 and who should initiate that, the amendment talks about the Pensions Regulator being,

"satisfied that continuity is best achieved by the substitution of a new funder".

It does not itself say that the Pensions Regulator effectively has to initiate it. I am not sure if we are on the same page on that one, although perhaps there is more than a glimmer of light. But I think that there is an issue here. We understand what the Minister has said about the role of the trustees as opposed to the Pensions Regulator, but what we were seeking was that the Pensions Regulator could perhaps have some influence, or focus on nudging, to get people to accept a situation where there is a new funder rather than go through one of the other courses—we accept that, obviously, that would involve the trustees having to sign up at some stage, and this would not necessarily be something done over their heads. Again, we will read the record, but it is something to which we will return on Report, among some other things. In the meantime, I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendment 38 not moved.

Amendment 39 not moved.

The Deputy Chairman of Committees: I cannot call Amendment 40, as it is an amendment to Amendment 39.

Clause 24 agreed.

Clause 25: Continuity option 2: resolving triggering event

Amendment 41 not moved.

Clause 25 agreed.

House resumed.

House adjourned at 9.37 pm.