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PARLIAMENTARY DEBATES
(HANSARD)

# HOUSE OF LORDS
## OFFICIAL REPORT

*ORDER OF BUSINESS*

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

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# House of Lords

*Wednesday 11 October 2017*

*3 pm*

*Prayers—read by the Lord Bishop of Chelmsford.*

## Brexit: EU Students
*Question*

*3.07 pm*

*Asked by* ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government how they intend to ensure that the benefits to the United Kingdom arising from European Union students studying at United Kingdom universities will be maintained post-Brexit.

**Viscount Younger of Leckie (Con):** My Lords, EU and international students enrich the UK financially and culturally. We will always ensure that our world-class higher education sector can attract students from Europe and elsewhere overseas. To support evidence-based decision-making on the future migration system we have commissioned the independent Migration Advisory Committee to report on the impact of EU and international students. To provide certainty to prospective EU students we have guaranteed that those starting courses in 2018-19 or before will remain eligible for student support.

**Lord Hunt of Kings Heath (Lab):** My Lords, it is very difficult to know why the Government have referred this to the advisory committee given that the Minister's colleague, the Home Office Minister, yesterday admitted that overseas students have negligible impact on the net migration statistics. The Government should just remove them entirely from that statistical return. He has guaranteed EU students up to 2018-19, but what then? It is now that students from other EU countries are considering coming to the UK in a couple of years' time. We risk losing them to other countries. Will the Minister guarantee home-fee status and access to grants and fee loans for students from the EU from 2019-20 and access to the Erasmus+ programme?

**Viscount Younger of Leckie:** The Government want to provide certainty to EU citizens living in the UK. We know that the sector cares about its current and prospective EU staff and students living in the UK and we want to reach a reciprocal agreement for EU citizens in Britain and UK nationals in Europe as quickly as possible. That is why we published our policy paper on 26 June to outline our offer for EU citizens and to provide them with the certainty that they need for their future.

**Lord Cormack (Con):** My Lords, if we want to provide certainty we can do it here and now. We can make an absolute guarantee that the question asked by the noble Lord, Lord Hunt, is answered in the affirmative. We can also make an absolute commitment to continue participation in Erasmus beyond 2019. What is stopping our doing that and taking a clear, unequivocal lead—and the moral high ground in the process?

**Viscount Younger of Leckie:** As the House will know, we have given guarantees for 2018-19. In terms of 2019-20, that is subject to ongoing negotiations; the House knows that well.

**Baroness Smith of Newnham (LD):** My Lords, at present EU nationals are entitled to attend British universities on the same basis as home students. Absent any other agreed settlement in terms of Brexit, they will in future be international students, subject to international fees. What work are Her Majesty's Government doing to ensure that EU students can continue to come on the basis they do now? I refer to my declaration as employed by Cambridge University.

**Viscount Younger of Leckie:** I think I made it clear in my previous answer that certainty is given for 2018-19. Discussion is ongoing as to what will happen from then on.

**Lord Deben (Con):** Is my noble friend aware that at the moment we are looking very ungenerous and unwelcoming to people from outside the United Kingdom, particularly in the rest of Europe? Will he therefore accept the comment of my noble friend Lord Cormack that we should not haver or talk about this, that and the other but just say "yes" and give a clear indication of the kind of generous nation we have always been?

**Viscount Younger of Leckie:** Well, wouldn't it be easy to say that? I can only reiterate that, as the House will know, negotiations are continuing. However, the UK still has a great offer for EU and international students. With four universities in the world's top 10 and 16 in the top 100, we are marketing ourselves abroad assiduously through the embassies and high commissions to continue to encourage students to come here to study.

**Lord Morgan (Lab):** We were not told by the Minister the remit of the committee that is being set up. Will it include the importance of research in our universities? Without this policy of a large number of EU students coming in, the creative work of our universities would be decimated.

**Viscount Younger of Leckie:** Indeed, that could well be covered. Perhaps I may give the House a little more detail about the commission. It will consider the impact of both EU and non-EU students at all levels of education and will consider the whole of the UK, including its constituent nations and regions. As well as considering the overall impact, the MAC will be asked to consider the impact of tuition fees and other spending by international students on the national, regional and local economies and on the education sector as a whole.

**Baroness Butler-Sloss (CB):** Will the Minister take back the message that so many in this House have agreed with?

**Viscount Younger of Leckie:** Yes, I certainly will. This is a subject that comes up fairly frequently in the House and I am sticking to the lines that have been given by my colleague the Minister.

**Baroness Afshar (CB):** My Lords, are the Government aware of the impact that Erasmus students have had on the development of science in this country and of how detrimental their loss would be to many departments? I declare an interest as a member of the University of York, where we have benefited hugely from the mobility of students going both ways, and from their being able to work freely and to attend meetings and sessions when necessary while not having to fill out all kinds of paperwork before moving?

**Viscount Younger of Leckie:** There was much talk about the importance of the university sector during the passage of the Higher Education and Research Bill, now an Act. The UK must remain among the best places in the world for science and innovation. We will continue to work along those lines and will seek to secure the best possible outcome for the UK research base as we exit the EU.

**Baroness McIntosh of Hudnall (Lab):** My Lords, I am sure that the noble Viscount has the sympathy of the House in having to stick, as he says, to a line which has been given to him but which, frankly, is inadequate. He can surely agree with the House that university research, and indeed university undergraduate work, extends over at least three, and often many more, years. Therefore, for him to say to the House, as if it were an act of generosity, that the arrangements will extend until 2018-19 really does not cut much ice, if he will forgive my putting it that way.

**Viscount Younger of Leckie:** The noble Baroness will know that the uarantee includes those who are starting in that year for the whole of their course, right through until and beyond our exit from the EU. At home, we are increasing research and development investment by £4.7 billion over the period 2017-18 to 2020-21—so there is a lot going on in this country to support this important sector.

## Burma: Rohingya People

*Question*

*3.15 pm*

*Asked by* ***Baroness Kinnock of Holyhead***

To ask Her Majesty's Government what action they are taking to prevent human rights violations against the Rohingya people in Burma.

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, we are deeply concerned by events in Rakhine State. The British Government have led the international response to press the Burmese authorities to end the violence and enable humanitarian access and an early return of the Rohingya refugees from Bangladesh. We believe that the implementation of the Annan commission recommendations offers the best long-term solution to the underlying issues in Rakhine, and we are working with like-minded partners to support the Burmese Government with implementation.

**Baroness Kinnock of Holyhead (Lab):** My Lords, I thank the Minister for what he has to tell us. However, in recent weeks, over half a million more Rohingya people have been forced to flee slaughter and other atrocities, hundreds of villages have been destroyed and the border has been landmined. That is what these people are facing, which makes it hugely difficult to talk about peace and agreement. The UN has called it nothing less than ethnic cleansing, but, shamefully, Aung San Suu Kyi, whom many of us have respected in the past, has called it "fake news". Will our Government now recognise the evidence of genocidal crimes against humanity and agree to lead efforts to immediately restore UN sanctions and arms embargoes against the Burmese regime?

**Lord Ahmad of Wimbledon:** First, I of course acknowledge the excellent work that the noble Baroness does on this issue and I share her sentiments totally. The brutality and military ruthlessness and the ethnic and religious prejudice that lies behind this human suffering are there for all to see. The noble Baroness will be aware that the UK has been leading action at the UN Security Council in the open debate that has taken place, and that there have been various engagements through both my right honourable friend the Foreign Secretary and my right honourable friend the Minister for Asia and the Pacific, who recently returned from Burma. We have also been speaking directly to the Bangladeshi Government—indeed, I met with Her Excellency the Prime Minister of Bangladesh last Friday. All the matters that the noble Baroness has raised are very much on the agenda. We do not, in any case, sell any arms to the military in Burma, and let us be absolutely clear: it is the military who are behind this ruthless and brutal treatment of the Rohingya. We were providing some military training through education on issues such as human rights, and that has also been suspended.

**Lord Alderdice (LD):** On the moral case which has been identified so clearly by the noble Baroness, Lady Kinnock of Holyhead, do Her Majesty's Government appreciate that the plight of these people because they are Muslims is now being used loudly as a recruiting sergeant by ISIS in south and south-east Asia? This is not just a question of the moral imperative to do what is necessary for the Rohingya people; we in this country must also say very loudly that we oppose any role that Aung San Suu Kyi has in all of this. We rightly have a history of being very supportive of her when she needed it. For the sake of our Muslim people, we must now say very clearly that what she is doing and the stand she is taking is wrong and that we do not support it.

**Lord Ahmad of Wimbledon:** Any kind of prejudice against any ethnicity or religion is unacceptable and it is quite right to point it out. I share the noble Lord's sentiments and agree with him that the time has come for Aung San Suu Kyi to use her moral authority to challenge directly herself the military ruthlessness and ethnic prejudice that lies behind the suffering.

**Baroness Hayman (CB):** My Lords, as the noble Baroness, Lady Kinnock, said, since August there has been an influx of more than 500,000 mainly Rohingya women and children into an already poor and over-populated part of Bangladesh, leading to a desperate humanitarian situation. I declare my interest as a trustee of the Disasters Emergency Committee. Like the British public, the UK Government have been generous in their response, not least in their aid match to the DEC appeal, but in the light of the overwhelming need of those people for food, shelter, sanitation and healthcare, I urge the UK Government to continue to review their contribution and ask other nations to do so as well.

**Lord Ahmad of Wimbledon:** The noble Baroness raises a pertinent point. It is regrettable that currently, as I am sure she and the House are aware, in Rakhine itself the authorities are not allowing humanitarian access, apart from the Red Cross. We have provided £1 million directly to that programme. But on Bangladesh specifically, she is right to raise the match funding that we declared on the £3 million. The noble Baroness may be aware, as I hope the House is, that we have also provided through DfID an additional £30 million in humanitarian assistance since the crisis started. That was announced in mid-September and is being spent directly on the issues that she raises, such as food and sanitation, currently for over 126,000 refugees.

**Baroness Berridge (Con):** My Lords, although the overwhelming majority of people have fled to Bangladesh, about 40,000 Rohingya have in fact fled to India. The Indian Government are now threatening to deport them back to Myanmar. Are we going to speak to our colleagues in India to outline their commitments under international law and the principle of non-refoulement, which means that they should not deport to a place where there is a risk of torture?

**Lord Ahmad of Wimbledon:** My noble friend raises an important point about the challenge and the burden that has fallen on neighbouring countries. We have talked about Bangladesh, and on the matter she raised, I can assure her that my right honourable friend Mark Field, during his visit to south-east Asia, also visited India and met with Foreign Minister MJ Akbar to discuss various issues, including the humanitarian situation and Burma itself.

**Lord Collins of Highbury (Lab):** My Lords, I welcome what the Minister said regarding the suspension of advice to the military in Burma, but has the same consideration been given to the DfID funding of parliamentary advice and the WFD funding of advice to the Union Government? While this genocide is going on, should we not suspend that activity as well?

**Lord Ahmad of Wimbledon:** The noble Lord raises an important issue. We have stood with Burma. I remember visiting Burma as a Minister in my previous role after the new Government were elected, and it was clear to me then that what the country needed most was acute assistance with governance. The noble Lord raises a couple of pertinent points and, if I may, I will take those back and write to him accordingly.

## Smoking: Broadcasting Code

*Question*

*3.22 pm*

*Asked by* ***Lord Storey***

To ask Her Majesty's Government whether they plan to strengthen the broadcasting code in relation to smoking on reality TV shows, particularly those aimed at young people.

**The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde):** My Lords, as the independent regulator, decisions on amending the Broadcasting Code are rightly a matter for Ofcom. Ofcom takes the protection of children and young people very seriously, and that is why there are already specific restrictions on the portrayal of smoking on television.

**Lord Storey (LD):** I thank the Minister for his reply. I do not know whether he is a regular watcher of "Love Island", but the ITV website describes that programme as an,

"emotional feast of lust and passion in the sun".

The same website says that the programme captures,

"56% share of 16-34 viewers".

On this programme, those contestants are regularly smoking. What message does that send to young people—that I can live a glamorous life if I smoke as well? I am surprised that the Ofcom Broadcasting Code says that smoking must not be,

"glamorised in … programmes likely to be widely seen, heard or accessed by under-eighteens unless there is editorial justification".

Does the Minister think that Ofcom should take action on this matter?

**Lord Ashton of Hyde:** My Lords, I am not a regular watcher of "Love Island", but I cannot help noticing that the House is unusually full today. Obviously, as I said, it is a matter for Ofcom. The Broadcasting Code is there to be regulated by Ofcom, and that is what Ofcom is there for. Any complaints about a programme will be investigated by Ofcom, and it is up to anyone who has concerns about smoking in this programme to complain to Ofcom. Incidentally, to put this into perspective, Ofcom had just under 15,000 complaints last year and 75 related to smoking on "Love Island".

## Brexit: World Trade Organization

*Question*

*3.25 pm*

*Asked by* ***Lord Mendelsohn***

To ask Her Majesty's Government what is their response to the letter of objection from the governments

[LORD MENDELSOHN]
of the United States and other non-European Union countries to proposals to split World Trade Organization tariff rate quotas following Brexit.

**Baroness Sugg (Con):** My Lords, the United Kingdom wants to ensure a smooth transition in the World Trade Organization that minimises disruption to our trading relationships. We intend to discuss intensively our proposals on tariff rate quotas and other matters with our partners in the WTO over the coming period. This is the start of an ongoing process and it is very much our intention to respect and preserve existing trade flows.

**Lord Mendelsohn (Lab):** Does the noble Baroness agree that the United States' rejection of the EU-UK plan for splitting existing quotas within the WTO raises serious doubts about the ability of the UK to negotiate the proposed "beautiful trade deal" with them? Can she further explain the Government's options in conducting trade deals during the likely years of delay it will take to resolve this matter, which will restrict and encumber the ability to conclude agreements covering areas such as agriculture and government procurement?

**Baroness Sugg:** I am afraid I do not agree with the noble Lord about our relationship with the US. The US is a very important partner for us—already our largest trading partner, with a fifth of our exports outside the EU. Of course, it is not just about trade. The US is the largest single investor into the UK. We remain positive about our trade and investment relationship with the US. Both the Prime Minister and the President have repeatedly made clear our shared commitment to bilateral trade discussions, including a future trade deal.

**Baroness Ludford (LD):** My Lords, surely the reaction of the US and other agricultural exporting countries did not come as a surprise to the Government—it was entirely predictable that they would use the potential leverage of Brexit. Have the Government prepared British farmers for a possible flood of competing imports and the halving of their incomes, as a report yesterday from the Agriculture and Horticulture Development Board warned?

**Baroness Sugg:** My Lords, we have obviously been speaking regularly with our WTO partners and the EU Commission about preparations for these negotiations. Today, the EU Commission in the UK sent a letter to all WTO partners, setting out our initial position, which has been published today on GOV.UK. Detailed discussions will follow in the coming weeks and months but we remain confident that we will be able to replicate as far as possible the UK's current trading regime.

**Baroness Crawley (Lab):** My Lords, will the Minister say whether the Government believe they will have to abide by the WTO post Brexit in opening up access to agricultural markets and goods from third countries far more than they want to, even before they agree new trade deals with those countries?

**Baroness Sugg:** As I said, our primary aim is to replicate as far as we can our trading deal and we remain confident that we will be able to do so.

**Lord Livingston of Parkhead (Con):** My Lords, does the Minister agree that it is not unusual in WTO negotiations for the first answer to be no? That is not a surprise. It will not be easy, but we will work together with the WTO over a long period, not just on agricultural projects but on a range of issues. That reinforces the need for a transition period in the Brexit negotiations.

**Baroness Sugg:** Yes, absolutely. We are discussing agriculture, as well as many other issues, with our partners. It will take time—we were expecting that—but we are committed to working constructively and openly with our partners. As I say, the aim is to replicate our existing trading regime as far as possible.

**Lord Kinnock (Lab):** My Lords, a hard Brexit—indicated as a possibility, or in some cases, a preference, by the Prime Minister this week—means that in that event, our country would be entirely dependent on the WTO rules regime. In view of that reality and the potential damage it would cause to agriculture and several other industries in this country—not even mentioning that that regime does not extend to services, upon which our economy depends—can the Minister give us a much clearer understanding of the Government's planning for the event of us being dependent on the WTO regime so that, at least in this respect, the obscurity that is now characteristic of the Government in their dealings with the EU is at least diminished?

**Baroness Sugg:** An agreed deal with the European Union is a mutually beneficial choice and we are confident that we can achieve that. But as the Prime Minister said, while we think that that is by far and away the highest probability, we have a duty to plan for the alternative, and that is exactly what we are doing, in detail.

**Baroness Smith of Newnham (LD):** My Lords, the leave campaign suggested before the referendum that being on WTO terms would be easy and straightforward —or that is how I understood its case. Do Her Majesty's Government have in place sufficient trade negotiators able to deal with both the European Union and the WTO? If not, what are they doing to rectify that?

**Baroness Sugg:** Absolutely: within the WTO we have committed additional resources to our UK mission to strengthen our ability to carry out work there and we are currently expanding within the Department for International Trade. We have gone up to nearly 3,500 members of staff and employed Crawford Falconer, who is an internationally recognised trade expert. We are fairly confident that we have enough capacity to make all these deals.

**Lord Richard (Lab):** My Lords, the noble Baroness said on a number of occasions that she is confident that the Government will be able to replicate our existing trading position. Can she enlighten us as to how on earth the Government propose to do that?

**Baroness Sugg:** Well, quite a lot of the detail with the WTO will actually be on a quite technical basis, but some of the more complicated areas, such as TRQs and AMS, are absolutely part of our conversation. We have agreed with the EU Commission to split the TRQs and we are now discussing that with our partners to ensure that we get the best deal we can.

**Lord Gadhia (Non-Afl):** My Lords, does my noble friend agree that the nature of splitting a tariff rate quota is such that the initial response from any of our international trading partners will be to try to get the entirety of that quota shifted to the remaining members of the EU, and therefore as my noble friend Lord Livingston said, initially we are bound to get objections to our proposed split, but ultimately it is actually a matter for negotiation?

**Baroness Sugg:** I absolutely agree with my noble friend. We have made it clear that we are not looking to increase access for our trading partners. Obviously, if we did say that, we would displace local producers in the UK and affect other WTO members who export to the UK through different schemes—for example, developing countries which would also see their trade erode.

**Baroness Miller of Chilthorne Domer (LD):** My Lords, I want to ask the Minister about the issue of farmers' incomes being halved, as mentioned in the report that came out yesterday. If that happens and it is so uneconomic to stay in farming, does the Minister not think that that will affect this country's food security terribly badly?

**Baroness Sugg:** Obviously, we are still in the process of negotiation, so we cannot know how this will affect our farmers. In the letter today we have talked about our agricultural support. We intend that the EU's current annual and final bound commitment level specified for domestic agricultural support will be apportioned between the future EU and the UK on the basis of an objective methodology, so there will be money to support our farmers.

**Lord Cashman (Lab):** My Lords, may I ask the Minister politely to request of the department a better-written brief, so that some of us achieve answers to the questions we put to her?

**Baroness Sugg:** I am quite happy with my brief but if there is anything specific which I have not answered then I will write to the noble Lord.

**Baroness McIntosh of Pickering (Con):** I commend my noble friend on her command of her brief on what is probably her first outing. Is it not of the utmost importance that the department clarifies what our status is with the World Trade Organization if there is any possibility at all, as the Prime Minister raised yesterday, of us leaving the European Union without a deal and without a transition period, so that we can then proceed to do those negotiations, as my noble friend has set out so clearly today?

**Baroness Sugg:** Absolutely; and as part of our conversations with the WTO we are, of course, planning for the unlikely eventuality of there not being a deal. We will continue to have those discussions as time goes on.

**Lord Newby (LD):** The Minister has twice said that the Government's aim was to "replicate" the current trading regime. I thought the Government's aim was to introduce a new suite of wonderful trading regimes with benefits as yet unspecified. Can the Minister explain whether the Government have lowered their sights already?

**Baroness Sugg:** Absolutely not—the main goal at the moment during our Brexit negotiations is to establish the UK's position in a way that minimises any disruption by, as I say, replicating the arrangements as far as we can. In future, once we have left the European Union and are able to negotiate our own trade deals, we will retain our ambition for those.

**Lord Lea of Crondall (Lab):** Has the Minister noted the number of policy areas where the reply from the Front Bench is, "We need to replicate as nearly as we can the current arrangements"? Is that not food for thought? Picking up the point made by the noble Lord, Lord Newby, is that not rather different from, "With one leap we are free"?

**Baroness Sugg:** As I said, I think, in response to the last question, we clearly understand that these are complex negotiations, and we have until March 2019 to continue them. No one expected them to be simple and we will continue to make sure that we get the best deal for the British people.

**Lord Harris of Haringey (Lab):** It is a rough and tough world out there. We have seen how the American Government—with whom we apparently have such wonderful relations that the state visit of the President was downgraded today, as I understand it—will play a very hard game, as you would expect. Can the Minister tell us how the Government expect even to achieve the downgraded objective of perhaps just simply maintaining our current trading position?

**Baroness Sugg:** Our objective of maintaining our current position is due to happen when we leave the European Union. Following that, there will be opportunities, as I said, to improve and expand on our relationships. Leaving the European Union does offer us an opportunity to build on our relationships across the world, including with the US, and I look forward to doing so.

## Operation Conifer

*Private Notice Question*

*3.37 pm*

To ask Her Majesty's Government whether they will commission an independent judicial review of the investigation Operation Conifer by Wiltshire Police, a summary closure report on which was published on 5 October 2017.

**Lord Armstrong of Ilminster (CB):** My Lords, I beg leave to ask a Question of which I have given private notice.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, we are very clear that the police are operationally independent of government. It is quite right that chief officers should decide how best to fulfil their duty to the public and it is for the locally elected police and crime commissioner to ensure that chief officers are held to account for properly conducting their investigations. The vital principle at the heart of British policing is that the police can carry out their duties independently and make decisions free from political influence. As such, the commissioning of any independent review, judge-led or otherwise, would be a matter for the police.

**Lord Armstrong of Ilminster:** My Lords, the Minister has used that argument before, while the operation was still in progress, but it will not wash now that it is concluded and we have to deal with its consequences. Edward Heath's reputation has been under a cloud of suspicion since August 2015, when an officer of the Wiltshire Police made an ill-judged public appeal outside Sir Edward's house in Salisbury for victims of child abuse by Sir Edward Heath and others to come forward and make themselves known to the police.

The report of the investigation published last Thursday, more than two years later, does nothing either to justify or to dispel that suspicion since it leaves unresolved seven allegations on which the police say they would have interviewed Edward Heath, had he been alive. As he is dead, the normal provisions and processes of the law are not available to resolve the matter, and the cloud of suspicion remains hanging in the air indefinitely.

Justice delayed is justice denied. The dead deserve justice no less than the living. Does the noble Baroness not agree that the best—perhaps the only—way of arriving at some finality of judgment would be to set up an independent review of the police investigation by a retired judge with unrestricted access to all the evidence collected by the police?

**Baroness Williams of Trafford:** My Lords, on the first question, the police officer's comments outside the home of Sir Edward Heath were probably ill judged. Matters of police conduct can be referred to the IPCC, and I understand that the Sir Edward Heath trust has done that. It was stated that Sir Edward Heath would have been interviewed under caution, but the bar for being interviewed under caution is very low and, as the report said, it in no way implies guilt on the part of Sir Edward Heath. As for the cloud of suspicion and whether an independent inquiry should be held, Operation Conifer is, as I have said, an independent police investigation. It is not appropriate for government Ministers to comment on an operationally independent investigation. Any decision to follow this by an inquiry would be a matter for the chief officer.

**Lord Lawson of Blaby (Con):** My Lords, like the noble Lord, Lord Armstrong, I once worked for Sir Edward Heath, and I should like to associate myself entirely with everything that the noble Lord said. There is one other aspect. Would it not be appropriate also, on top of what he has suggested, for the Comptroller and Auditor-General to look into what has been a grotesque misuse of large sums of public money?

**Baroness Williams of Trafford:** My Lords, I take what my noble friend says, but it is very important to understand that part of an investigation of this sort also looks towards whether there are any contemporary child safeguarding issues around the living. If members of the public bring complaints and allegations forward to the police, it is right that the police investigate them, particularly if there are any ongoing or current misdemeanours to be looked into in addition.

**Lord Rosser (Lab):** My Lords, my understanding, which may well be incorrect, is that Wiltshire Police undertook this investigation in effect as the lead for a number of police forces, as the Operation Conifer investigation was not confined to alleged matters or to people in Wiltshire. In the light of the concerns expressed in some quarters about the investigation, and in the light of the response the Minister has given to the noble Lord, Lord Armstrong, can she clarify this point? Which elected person, if any, had the statutory power—if they so chose to use it—to challenge how the Operation Conifer investigation was being conducted or even to stop it? Did the Home Secretary have that power? Did the Wiltshire police and crime commissioner have that power? Did some other elected figure have that power—or did no elected figure have that power?

**Baroness Williams of Trafford:** The elected power who would have the authority to undertake any of the issues that the noble Lord is talking about would be the PCC. It would be up to him whether to call for an investigation and it would be for him to, perhaps, refer matters to the IPCC. He is the elected power.

**Lord MacGregor of Pulham Market (Con):** My Lords, I declare an interest in that I worked very closely with Edward Heath when he was leader of the Opposition and I was head of his private office in the mid-1960s. The most damning indictment of Operation Conifer came from the noble Lord, Lord Macdonald of River Glaven—the former Director of Public Prosecutions—who was in the best position to know, when he called it a sham. There is another problem: if distinguished contributors to our public life, such as Edward Heath, are treated in this way, is that not a major disincentive to others who wish to enter public life? I urge the Government to think again.

**Baroness Williams of Trafford:** My Lords, it is a matter for the police to follow up any allegations of criminal activity that are brought to them. The public would rightly complain if allegations were brought forward that were ignored by the police. I can see the sensitivities on all sides of both Houses of Parliament on this; nevertheless, if an allegation is brought forward, the police must investigate it.

**Lord Blair of Boughton (CB):** My Lords, I remind the House of the shoot-to-kill investigation in Northern Ireland. At that time, I was working for the Chief Inspector of Constabulary. It was quite clear that the chief inspector was the person who could actually intervene in this matter and we could start there. Whether it is a judicial inquiry that follows, the Chief Inspector of Constabulary is the person to whom a Government should look for an inquiry to begin into whether this has been done properly. The example of Operation Midland, investigated by Lord Justice Henriques, has been incredibly helpful to the police, and there is no reason why, if the Chief Inspector of Constabulary is convinced that something should be done, it should not be done.

**Baroness Williams of Trafford:** My Lords, far be it from me in any way to contradict the noble Lord, but I understand that the PCCs are locally elected and democratically accountable. It is their role to hold the local police and the chief constables to account. Any inquiry or review of the police investigation would be a matter for the PCC and the chief constable.

**Lord Campbell-Savours (Lab):** My Lords, Chief Constable Veale says that his investigation—this sham investigation—complied with national guidance. If that is the case, why can the guidance not be reviewed? Is that not the function of the inquiry that we are now demanding? Secondly, when is this man "Nick" going to be prosecuted?

**Baroness Williams of Trafford:** The noble Lord makes a very good point about false allegations. Of course, they can certainly be dealt with in relation to perverting the course of justice. As for the other question asked by the noble Lord, it is up to the PCC and the chief constable to decide whether a review of the police investigation should be held.

## Natural Environment and Rural Communities Act 2006 Committee

*Membership Motion*

*3.48 pm*

*Tabled by* ***Lord McFall of Alcluith***

That Lord De Mauley be appointed a member of the Select Committee in place of Baroness Scott of Bybrook, resigned.

*Motion not moved.*

## Student Finance

*Statement*

*3.49 pm*

**Viscount Younger of Leckie (Con):** My Lords, with the leave of the House, I will now repeat a Statement made in the other place by my honourable friend the Minister of State for Universities, Science, Research and Innovation. The Statement was as follows:

"On 9 October, I made a Written Ministerial Statement to the House setting out changes to the repayment threshold for student loans from April 2018 and confirming the maximum tuition fees for the 2018-19 academic year. The Government's reforms to higher education funding since 2012 have delivered a 25% increase in university funding per student per degree. University funding per student is today at the highest level it has ever been in the last 30 years.

As the House is aware, the Government have decided to maintain tuition fees at their current level for the 2018-19 academic year. This means that the maximum level of tuition fees will be £9,250 for the next academic year, 2018-19, which is around £300 less than if the maximum fee had been uprated with inflation. We will also increase the repayment threshold for student loans from its current level of £21,000 to £25,000 for the 2018-19 financial year. Thereafter, we will adjust it annually in line with average earnings. This change applies to those who have taken out, or will take out, loans for full-time and part-time undergraduate courses in the post-2012 system. It also applies to those who have taken out, or will take out, an advanced learner loan for a further education course.

Increasing the repayment threshold will put more money in the pockets of graduates by lowering their monthly repayments. They will benefit by up to £360 in the 2018-19 financial year. Overall lifetime benefits are greatest for graduates on middle incomes; low earners, of course, continue to be exempt from repayments.

We have a world-class university system, accessed by record numbers of people from disadvantaged backgrounds, and a progressive funding system. We are building on those strengths through our planned reforms, including through technical education to provide new routes to skilled employment and strengthening how we hold universities to account for teaching and outcomes they deliver through the teaching excellence framework. The changes that we are making are considered proposals that reinforce the principles of our student loan system and ensure that costs continue to be split fairly between graduates and the taxpayer.

However, we recognise that there is more to do. We have further work under way to offer more choice to students and ensure they get value for money. We want more competition and innovation, including through many two-year courses. As the Prime Minister made clear last week, we will continue to keep the system under careful review, to ensure that it remains fair and effective. The Government will set out further steps on higher education student financing in due course".

That completes the Statement.

*3.52 pm*

**Lord Hunt of Kings Heath (Lab):** My Lords, I am grateful to the Minister for making that Statement. In her speech at the Conservative Party conference, the Prime Minister promised a major review of university funding and student financing, yet details about that review were absent from what the Minister said this afternoon. What are the review's terms of reference, who will conduct it, what is the timetable, and when will the Government make a Statement to both Houses on it?

[Lord Hunt of Kings Heath]

Ministers did not say anything either here or in the Commons about the policy on maintenance. Are the Government considering restoring maintenance grants, as they briefed to the media? They have also said that they will publish the revised resource accounting and budgeting charge—the Government's estimate of the portion of loan that will never be repaid by graduates, which has risen steadily under the jurisdiction of this Government. Have they calculated the impact on the RAB of this latest announcement? If so, why have not they published it with the announcement?

Separately, there is a question about the impact on the department's own budget in this and future financial years. Will the Government make an additional allocation for the department to cover the costs of the announcement, or does it imply cuts in education spending? Will there be any reduction in funding for universities as a consequence of these changes?

**Viscount Younger of Leckie:** I thank the noble Lord for his questions. First, as I said, the Prime Minister indicated that there would be a review. Actually, the tuition fee system is kept under constant review, so what she announced was that more detail and information would come out towards the end of the year on what is proposed. However, I cannot go into further detail at present.

The noble Lord also asked about maintenance grants. No, there is no plan to bring back maintenance grants, but he will have to wait until the end of the year to see what further announcements might come, as Jo Johnson said earlier in the Commons.

As the noble Lord will know, the resource and accounting figures come out regularly. I understand that the latest figures will be out soon. They will show that we are on track in effect to write off—as of before the announcement—around 30% of all the loans. This is all part of the complicated funding formula used for the tuition fee system. Of course it should be noted that, with the changes that we have announced, the write-off will go up slightly to between 30% and 40%.

**Lord Storey (LD):** My Lords, I am grateful to the Minister for this Statement. I do not want to go into the issue of maintenance grants again because he has replied to that. The Office for Fair Access showed that, in 2014-15, 8.8% of full-time students from low-income backgrounds did not continue at university beyond their first year.

I am taken with the phrase "an education system that works for all". Yet we know that 60% of young people do not go to university. Those who pursue a vocational route must enjoy parity of esteem with those following an academic option. People should be able to access further or higher education at any age. Will the Government consider the issue of student finance more broadly, so that people can choose for themselves when to access government funding for education and training, rather than feel pressured into attending university at 18 or 19 when it may not be suitable for them?

**Viscount Younger of Leckie:** First, I recognise—as the House will recognise—that there is concern about student debt. We know that some students have accumulated a considerable amount of debt. This is part of the reason for the announcement today and the Written Statement on Monday, thereby raising the threshold from £21,000 to £25,000 and freezing the increase. These changes are designed to be helpful to students.

The noble Lord is absolutely right about creating parity of esteem between vocational and academic entry. This is part of the range of educational reforms that this Government have been making and which we wish to continue. I know that the noble Lord has been at the forefront in trumpeting these issues.

Linking to that, whatever may be decided in terms of student funding will—or may—come out towards the end of the year as part of the regular reviews going on.

**Baroness Wolf of Dulwich (CB):** My Lords, I too welcome the Minister's Statement. I should like to follow up on what the noble Lords, Lord Hunt and Lord Storey, have already said.

There are two major issues on which I would certainly welcome clarification. First, what we have at the moment is unquestionably a system which is building up a vast amount of unrepayable debt which will fall on the general taxpayer and is very regressive. I would welcome clarification as to whether both the quantity of debt and its impact—on the people who are ultimately paying for it—are going to be addressed in this somewhat ever-receding review.

The second issue is equally important. The Minister repeated that this Government intend that technical education should provide new and improved routes—something I strongly welcome. However, I draw the Minister's and the House's attention to the fact that the only current funding system for people who are doing not university degrees but more advanced degrees of a technical sort is—increasingly—something called advanced learner loans. This system is in total collapse. I do not know why but, basically, it seems impossible for the Government to lend the money, which must mean that people cannot access it, that they do not think it is going to work, or that the terms are totally unacceptable. I would be grateful if the Minister could confirm whether or not this—and related aspects of the student finance system—will be covered fully and in depth in the review when it happens.

**Viscount Younger of Leckie:** I thank the noble Baroness for her point. We are alert to a certain number of students who have accumulated debt but the changes today—raising the threshold to £25,000, and at the upper level from £41,000 to £45,000—should and will help students and will provide some relief. We firmly believe that the tuition fee system is working. It has certainly enabled more people from disadvantaged backgrounds to go to university, which I think everybody recognises, and that must be an extremely good thing.

The advanced learning points that the noble Baroness has raised may well be included in the comments that will come out towards the end of the year. I hasten to add that the noble Lord, Lord Hunt, talked about a major review—yes, the Prime Minister did say that. The issue is that there is a constant review going on, so

there will be some views coming out towards the end of the year. There will be no formation of a committee coming out of that review, however, just specific review comments.

**Baroness Blackstone (Lab):** My Lords, I find the Minister's response to my noble friend Lord Hunt's question about the independent review, and indeed what he has just said in response to the previous question, a little puzzling and confusing. Surely there is some urgency in setting up this independent review that the Prime Minister announced. The current system is not working as well as the Minister has just claimed: the level of debt is now enormous and the amount of repayment is far below what was originally anticipated, so the hole in the public finances in the future will be huge. Moreover there is a very important group—part-time and mature students—whose numbers have declined hugely as a result of the enormous rise in fees from £3,000 to £9,000. Can the Minister go back to his colleagues and to the Minister in the other place and express the views of this House—certainly it is my view and I think that of others who have spoken—on the importance of getting on with this review and that part-time and mature students should be considered? Students doing vocational and technical courses should also be considered, not only in higher education but in further education, as that group has been hugely neglected in the past.

**Viscount Younger of Leckie:** I am well aware that the noble Baroness has taken quite a lead, particularly during the passage of the higher education Act, on part-time and mature students. The Minister in the other place will take this into account; I have no doubt that that will be the case in constantly reviewing this aspect, although I cannot confirm whether it will be at the top of the list. In terms of her concerns about urgency, we issued a Written Ministerial Statement on Monday and followed that up with the announcement today, and here I am at the Dispatch Box. These changes are as a result of our listening to students and to parliamentarians—we have taken some action. The resource and accounting figures are kept constantly under review but there will be a slight increase, of course, as a result of our changes; I made that point earlier. Tuition fees are, in effect, a subsidy to the nation to allow more people to go to university.

## Armed Forces (Flexible Working) Bill [HL]

*Report*

*4.03 pm*

***Clause 1: Regular forces: part-time service and geographic restrictions***

*Amendment 1*

*Moved by* ***Lord Touhig***

**1:** Clause 1, page 1, line 2, leave out from beginning to "is" in line 3 and insert "The Armed Forces Act 2006"

**Lord Touhig (Lab):** My Lords, Amendments 1, 2, 4 and 10 will, if agreed, mean that regulations made necessary by the passing of this Bill will be subject to the affirmative procedure. It was a point well debated in Committee, and I do not need to rehearse those arguments again at length. It is worth pointing out, however, that the Delegated Powers and Regulatory Reform Committee, following its consideration of the Bill, stated:

> "The Bill will confer novel and broad powers on the Defence Council to make provision for part-time service … These powers are conferred without any detailed provisions on the face of the Bill limiting or restricting how the powers are exercised. In the circumstances we consider that the affirmative procedure should apply, and that this is so despite the fact regulations under section 329 of the Armed Forces Act 2006 are generally subject to the negative procedure".

I believe that there is agreement across the House that the Government should heed the committee's recommendation. I thank the Minister for his willingness to engage in discussions, both in Committee and outside, on this matter and for his undertaking that the Government are listening to the comments that are being made.

This Bill introduces provisions enabling the Defence Council to make regulations regarding part-time working and the new forms of geographically restricted service. The Defence Council will also be able to make regulations setting out the circumstances in which agreements can be varied, suspended or terminated. The provision in the Armed Forces Act 2006 that governs the parliamentary procedure to which regulations are subject is Section 373. At present, any regulations made under Section 329 are subject to the negative procedure. However, our amendments will ensure that any regulations made under the new sections to be inserted by this Bill will be subject to the affirmative procedure. Section 373(3) sets out which regulations made under the 2006 Act are subject to the affirmative procedure, and the amendment inserts reference to regulations under the Bill into that list. The amendments also amend the wording of Clause 3(6) of the Bill to reflect the fact that Clause 1 now amends two sections of the Armed Forces Act 2006 and not just one. I beg to move.

**Baroness Smith of Newnham (LD):** My Lords, I rise to speak to the amendments, particularly to Amendment 8 in my name and that of my noble friend Lady Jolly. My comments will be very much in line with the words of the noble Lord, Lord Touhig. In Committee, the Minister said:

> "I am not in a position today to give any undertakings on the substance of this issue, but I undertake to reflect further on the matter in a constructive way ahead of Report".—[*Official Report,* 12/9/17; col. GC 85]

If constructive reflection has occurred, it has not been visible in the form of any government amendment. Could the Minister explain to the House why no government amendment has been forthcoming and, in the absence of that, why noble Lords should not accept either the amendments of the noble Lord, Lord Touhig, or that of my noble friend Lady Jolly?

**Earl Attlee (Con):** My Lords, to answer the noble Baroness, I suspect we are going to find out very shortly.

[Earl Attlee]

An essential characteristic of any good parliamentarian is curiosity, so I can understand why many noble Lords would like to debate the first relevant new Defence Council Instructions before they are implemented. However, in the future it may become apparent that it would be appropriate to make a slight amendment to the regulations concerning flexible working in order to make them work better, be fairer to service personnel or for some other desirable reason. Unfortunately, no such amendment is likely to be made unless it is absolutely essential. The reason is that, thanks to these amendments, an affirmative order will be needed and the MoD will simply not bother with it—it is just too much trouble, unless it is absolutely essential.

Why, then, is my noble friend likely to acquiesce to these amendments? The answer is that he will have told his officials that they have only one shot and they must get the regulations right first time. In short, my noble friend probably thinks that no amendments to the regulations will be needed for a long time, so it does not really matter. Unfortunately, these amendments would make the parliamentary scrutiny of Section 329 of the Armed Forces Act entirely inconsistent, as recognised by your Lordships' DPRRC's first report. The fact that a power is novel—in other words, innovative and broad—does not necessarily mean that it should attract the affirmative procedure; what really matters is if there was likely to be any difficulty with it.

The Bill and the subsequent regulations under Section 329 provide flexibility for service personnel, and that can only be positive for them as it will enable certain of them to continue to serve when otherwise they would have to consider leaving the services. However, any of these regulations under the Bill will attract the affirmative procedure.

Contrast the flexible working provisions that we are talking about with, for instance, Section 329(2)(d), which I suspect enables Defence Council regulations to impose golden handcuffs on a service person in exchange for attending a desirable course. For instance, if a soldier has completed his minimum term of service, he or she might want to be considered for training as a helicopter pilot. Quite understandably, the MoD would want to prevent that new pilot from leaving for civvy street immediately after qualification—hence the need for the golden handcuffs. But what if the MoD is experiencing a shortage of helicopter pilots? As far as I can see, the Defence Council could retrospectively increase the period for the golden handcuffs. However, these regulations, which could be very tough, are made under the negative procedure.

If we accept these amendments—as I expect we will—not only will we make the parliamentary scrutiny of Section 329 of the Armed Forces Act entirely inconsistent but we will be getting ourselves deep into the weeds. Apparently, the MoD is considering whether two landing platform docks should be taken out of service, while your Lordships want to look at the minutiae of flexible working for a few service personnel. If we can trust Ministers and the Defence Council to make really difficult strategic or operational decisions, sometimes on a very short timescale, I think that we can safely allow them to amend the original flexible working regulations on their own.

**The Minister of State, Ministry of Defence (Earl Howe) (Con):** My Lords, I said in Committee that the Government would reflect further on the recommendation from your Lordships' Delegated Powers and Regulatory Reform Committee. That committee's recommendation is to the same effect as the amendment of the noble Lord, Lord Touhig, and indeed the proposed amendment of the noble Baronesses, Lady Smith and Lady Jolly.

I am grateful to both the noble Lord and the noble Baroness for their thoughtful contributions to this Bill. I recognise the hesitations of my noble friend Lord Attlee around the affirmative procedure in this context, but the Delegated Powers and Regulatory Reform Committee rightly highlighted to the House that some of the new Defence Council regulations to be made under this Bill will go beyond matters of pure procedure. We have considered the committee's recommendation and its reasons for making it, and we have decided on balance that it is right to accept it. I acknowledge the strength of feeling in this House to ensure appropriate scrutiny of those forthcoming regulations.

While the intended effect of the amendments of the noble Lord, Lord Touhig, and that of the amendment of the noble Baroness, Lady Jolly, is exactly the same, I hope that the noble Baronesses will not be unduly disappointed if on this occasion I agree to accept the amendments of the noble Lord, Lord Touhig, to the Bill, which I am pleased to do.

**Lord Touhig:** My Lords, this has been a very brief but successful debate all round, I think. I am grateful to the noble Earl, Lord Attlee, for having shared his views with me on a number of occasions. I understand his concerns. I have been in this House just seven years, but one of the striking contrasts I have found with the other place is our total and utter commitment to scrutinise and hold government to account, whether it is on large issues about platforms or issues that the noble Earl may consider to be of a much lesser degree of importance. We will want to continue that. I am grateful for the support, and I am very grateful to the Minister for accepting the amendment.

I pay particular tribute to the noble Baroness, Lady Fookes, who chaired the committee that brought forward the recommendation to which the Government have certainly listened. She has done a tremendous job, and we all wish her well and hope that she is back soon.

*Amendment 1 agreed.*

*Amendment 2 agreed.*

*4.15 pm*

*Amendment 3*

*Moved by* ***Lord Craig of Radley***

**3:** Clause 1, page 1, leave out lines 6 and 7 and insert—

"(ha) enabling a person serving with a regular force to take breaks from full-time service subject to prescribed conditions;", and"

**Lord Craig of Radley (CB):** My Lords, Amendment 3 stands in my name and those of my noble and gallant friends Lord Boyce and Lord Walker. At Second Reading and in Committee, the Minister explained that the Armed Forces have been losing—or may lose—individuals of experience with good professional and personal qualities because they face unmanageable conflict between the 24/7/52 commitment to their service and the personal, private demands of a temporary nature in their daily lives. Faced with these difficulties, the individual may, albeit reluctantly, resign and leave their service. Training a replacement—let alone developing experience and expertise in the new recruit—is costly and takes time. So long as operational capability is maintained to provide opportunities for an individual to take breaks in their service, this could be described as "win-win": the individual is more able to manage pressing private commitments; their valued personal and professional qualities and expertise are not permanently lost to their service; the cost of training a new replacement is avoided; and the pay foregone while individuals are away on their break benefits the defence budget.

The proposals have the backing of today's senior leadership in the forces. We accept that—it is win-win. Our objection is to describing this novel type of flexible working—and amending the Armed Forces Act 2006—using the term,

"serve … on a part-time basis".

It can rightly be argued that "part-time" is a useful and honourable form of employment in civilian occupations. But this phrase, and the unavoidable and inevitable categorisation and labelling of service individuals as "part-timers"—as used in civilian settings of weekly hours' work—is inimical to the concept and ethos of military service.

Everyone who is on full-time service serves the Crown 24/7/52—they are not employees. Surely it is wrong to place individuals who are prized for these qualities, and whom their service wishes to retain, at risk because of the use of this phrase of being classified by some colleagues as lacking full commitment to their service. Moreover, might it not encourage some of these individuals and others to believe that their service is content for them to engage in part-time work in civilian employment as well, knowing that they are protected from any recall apart from a national emergency? Is this what the Minister and the MoD expect and accept? If not, how should we avoid it as an outcome of this approach?

Following Committee, the Minister readily agreed to set up a meeting which the noble and gallant Lord, Lord Boyce, and I had sought with the Bill team. But there was no meeting of minds. The Minister's subsequent follow-up letter to me on 29 September—copied to others and put in the Library—said that the phrase "part-time" had been used in previous Armed Forces Acts, so seeking to reassure that the use of the phrase was not unprecedented. He also said that the House could not amend the Long Title, which contains the term "part-time". Although given in good faith, this weak defence of the use of "part-time" proved to be misleading and inaccurate. When I checked, I could not find the term "part-time" in the Armed Forces Act 2006, or in any of the previous three single-service Acts—apart from one reference. That reference—in the Army Act 1955—is to a definition of "part-time" contained in the National Service Act 1948.

The 1948 definition referred to a serviceman's seven-year commitment to be a member of a reserve force following immediately after his full-time national service. This was described as "part-time service"—"full-time service" being national service. Incidentally, this section specifically excluded these national servicemen from the provision in that section of the Army Act 1955. This now historic example bears absolutely no relation to the current use of the phrase. Maybe this is not the only previous use of "part-time" in Armed Forces legislation. However, lacking any formal legal definition, and given the changing uses of the words "part-time" over the years, surely it is wrong to use such a phrase to amend primary legislation in what appears—certainly to me—to be a sloppy and questionable way.

The Minister stated as an example of this flexible scheme that the individual might take one or two days a week away from their service duties. But might it be that more days off in a week, but not every week, would better suit the individual's circumstances while still being acceptable to their service authorities? This amendment therefore concentrates on the idea of taking breaks from full-time service rather than on working weekly on a part-time basis. Surely it would be better, as this amendment proposes, for both the individual and their service to enable breaks from full-time service rather than to serve on a part-time basis. Eligibility, application and other rules and regulations could be set out as already proposed, and conditions prescribed in subordinate legislation.

This approach is positive. It concentrates on what the individual is seeking rather than on the undefined implications of the words "part-time". These individuals are so valued by their service that they are being singled out to receive special treatment and dispensation from the full-time service obligation of their contemporaries. Our amendment avoids any danger of labelling these prized individuals as statutory part-timers, which might expose them and their service to inappropriate and demoralising treatment by some colleagues or by those who might seek to disparage the good name and full commitment of the Armed Forces. Of course, it can be argued that this should not happen. However, the issue surely is not whether it does but that the risk that it might is not run.

On the issue of the Long Title in Amendment 11, which is in this group, we have taken advice from the clerks. The *Companion* guidance is that a Long Title may be amended if the content of the Bill is changed during its passage. This verges on simple common sense. For completeness, we have tabled Amendment 11, but its consideration of course will follow only from Amendment 3.

We hope that what I am afraid is the obdurate resistance to the advice and recommendations expressed at Second Reading and in Committee by some experienced individuals will be reconsidered and that the Minister will agree to further discussion on a better-expressed approach and statutory wording to enable the introduction of a worthwhile flexible concept. I beg to move.

**Lord Boyce (CB):** My Lords, I support the amendment moved by my noble and gallant friend Lord Craig.

I remain to be convinced of the necessity of the Bill, as the Armed Forces are already empowered to allow flexible working. Some might argue that the Bill will allow the Armed Forces to be brought in step with modern working practices, which will be an important improvement to quality of life and hopefully will improve retention. Retention would be markedly improved if the men and women of our services were not profoundly depressed by a defence budget that is totally inadequate to meet the aspirations of SDR 2015, and when our service men and women are seeing major savings measures being contemplated that will impose major savage surgery on present and future equipment capability, and which have already dramatically curtailed training overseas—which, apart from causing us to become an embarrassment in the eyes of our allies, will have a concomitant downward effect on operational capability and morale. This is all on top of the fact that our service men and women are suffering from a number of deeply hurtful efficiency measures in train that are making their quality of life woeful.

Aside from that, I do not envisage that the Bill can be stopped. But if it is to go through, a key to its subsequent success from an Armed Forces perspective would be its attractiveness to the limited number of those—certainly very limited in the case of the Royal Navy—who would be allowed to take time away from their duties.

There is no way that labelling this "part-time" will be remotely attractive. It may be that such an expression is viewed with equanimity, if not honour, in civilian life, but I am astonished that there are those in this House who consider that being in civilian life is the same as serving in the Armed Forces. In the Armed Forces this will be viewed as an unpleasant epithet and will be used as such by the media and others ill-disposed towards us who desire to be insulting. When our allies, especially the United States, which is already deeply concerned about our potential capability cuts, hear that we are to have a part-time Army, Navy and Air Force—which is how it will be characterised—they will think we have lost the plot.

Apart from that, part-time in civilian life does not require a person to be instantly recallable at any time of the day or night, weekday or weekend. Some may think that this provision in the Bill is unlikely to be realised—but what happens if a strategic submarine cannot sail because of a lack of a nuclear propulsion watchkeeper? That is a national emergency.

In other words, to characterise these arrangements as "part-time working" as seen through civilian eyes is to obscure the fact that this will be a temporary arrangement between a service person and their chain of command which can be ended at the wish of either party with notice or terminated without notice in the event of emerging operational imperatives—for example, my nuclear operator analogy.

Also, there are policy limits on how long and on how many occasions through a career a service person may apply to serve under reduced-commitment terms and there will be practical limitations on who may be considered eligible for such arrangements, and when. As I have already said, there will be many limitations in the case of the Navy.

Given these circumstances, resorting to language where one will be called a part-time sailor, soldier or airman will be deemed among those who matter—and I have spoken to a lot of service men and women, rank and file, in the past few weeks—derogatory and belittling of their contribution. The expression is flawed in definitional terms.

Thus, my contention is that this expression—"part-time"—will do nothing to enhance the attractiveness of this sort of flexible working, which has its advantages, as my noble and gallant friend pointed out. In fact it will do quite the opposite. It will be retention negative and will add to the challenges facing the chain of command, who are charged with overseeing a shift in the culture underpinning working patterns on which the success of this initiative rests.

I totally endorse the amendment, and particularly my noble and gallant friend's words in it, which are a far better definition for people wanting to take breaks.

*4.30 pm*

**Lord Walker of Aldringham (CB):** My Lords, I strongly support this amendment as well. Life in the military world is divided into two distinct types. The first is when folk are deployed on operations, normally in some far-flung place. Working days are often 18 to 20 hours long, sometimes longer. There are no weekends, no bank holidays, no serious recreational time and very little time for individuals to have to themselves. Focus is on the job in hand, you have to be ready to react at a moment's notice, and the pressure is on you 24 hours a day. There is no way that could be described as part-time and no way that people could be part-timers in that sort of scene.

The second type is what one might call the routine, more normal life in barracks. This is all about training, career development, ceremonial, military aid to the civil power and similar activities, as well as getting a better work-life balance for service folk with their families. This is much more the sort of life that other professions might recognise. In this style of life, breaks from service are entirely possible, entirely sensible and entirely warranted, and, as we have already heard, it happens on the ground as we speak. But, again, "part-time" is not the right way to describe such breaks.

The very word "part-time" implies a long-term arrangement and, for the Regular Forces, carries a stigma that damages the self-esteem of the individual, makes others question an individual's commitment and, indeed, damages the self-esteem of the institutions that are the services themselves. Moreover, the word "part-time" could be lighted upon and magnified by the media to further exacerbate a notion that we were indeed a part-time set of forces—to the very dismay of our services and particularly our personnel. If they were so to do, we would have only ourselves to blame by enshrining these words in law. Therefore, I very much support the amendment and hope that it will be accepted.

**Earl Attlee:** My Lords, I have listened carefully to the case presented by the noble and gallant Lord, Lord Craig of Radley, for changing the words of the

provision. I agreed with everything that the noble and gallant Lord, Lord Boyce, said, apart from his remarks about the merits of the amendment. I particularly agreed with his comments about morale and funding the Armed Forces.

My first thought is that, if we were in a situation where the Armed Forces were fully funded and recruited, we would probably not be going down this route. However, our current situation gives us the opportunity to give defence HR a good wire-brushing. I strongly agree with the noble and gallant Lord, Lord Walker, that service life is not employment or a job; for me, it is, or was, Her Majesty's service, which is very different.

If I were the Minister faced with this problem—or, rather, opportunity—my first thought would be to encourage service people who would like some flexibility or stability to go on to the reserve and then make an additional duties commitment. There would have to be some pension considerations and some certainty that the service personnel could get back into regular service, but I do not think that would require primary legislation. During the briefing sessions that the Minister organised, we asked about that, but apparently the Bill route is the optimal solution. Given the well-known difficulties with primary legislation, which we are experiencing now, we can be reasonably confident that this is the best course of action.

The noble and gallant Lord made a very good point about the possible public and service perceptions of part-time Regular Forces. Unfortunately, nothing we can do will stop the media running a story from a negative position. The noble and gallant Lord will also know that it is very hard to get the media to run any good defence news story. If they want to run this particular development negatively, nothing in the drafting of the Bill will prevent that.

I was in a similar position to the Minister when the Opposition Front Bench favoured slightly different drafting for a particular clause in a Bill that I was handling. However, I was in the fortunate position that my officials were able to advise me that I could accept the revised drafting if I wanted to, and of course I did. My noble friend is a much more experienced and, most importantly, much more senior Minister than I was. However, my suspicion is that he is simply unable to change the drafting for legal reasons.

When the noble and gallant Lord comes to decide what to do with his amendment, I think he will be wise to exercise caution. First, I do not expect that he will be carrying that magic slip of paper from the clerk to the Lord Speaker. Secondly, if we make too much of a meal of this Bill, we run the twin risks of, to some extent, deterring the MoD from running a similar small, discrete and desirable Bill and of making the government business managers equally cautious of such a Bill in the future, even if it were one that found favour with noble and gallant Lords.

**Lord Condon (CB):** My Lords, I rise to support the amendment put forward by the noble and gallant Lords, not only for the reasons that they have articulated but very briefly to mention my experience in my former service, the police. I was able to initiate and help champion flexible working in the police service. We used terms such as career breaks, career development breaks and role sharing. We very carefully avoided any notion of part-time, simply because in my old service in the military and maybe in some other uniformed public services, job description generics carry weight beyond just normal civilian meaning. While it may be feared that the noble and gallant Lords and I are being oversensitive, notions of part-time can be seen to dilute notions of operational prowess, commitment, sense of duty and so on. If there is even the risk that, informally, notions of part-time will dilute how colleagues in the military view people taking advantage of flexible working, the term "part-time" should be avoided. If there is some room here for change, I hope the Minister will listen very carefully to the arguments put forward by the noble and gallant Lords. If there is a necessity to test the opinion of the House, I think this is so important that I will support the noble and gallant Lords.

**Lord Dannatt (CB):** My Lords, I also rise to support the speeches made by the noble and gallant Lords, Lord Craig of Radley, Lord Boyce and Lord Walker. I will not repeat their arguments. It is quite clear from conversations that one has had that the general thrust of the Bill is well supported. The point at issue here is the use of the term "part-time", and I underline my opposition to its use. I add one further argument for the noble Earl to reflect on. One of the Army's six core values is selfless commitment. That selfless commitment is not divisible; it cannot be on a part-time basis.

**Lord West of Spithead (Lab):** My Lords, I rise to support the amendment of the three noble and gallant Lords. I very firmly share the view of the noble and gallant Lord, Lord Boyce, about whether there is really a necessity for this Bill, but it will happen. Having been in government, I know that these things get on tram rails and go along. But words are important and "part-time" is not a very good term to use; there is no doubt that it will be damaging. On that specific point, I disagree with the noble Earl, Lord Attlee. It can have a lot of impact and be very damaging. That is not the intention of the Bill, and such a minor change of wording has a huge impact. If the House divides, I will certainly be voting for the amendment. I spoke to the noble Viscount, Lord Slim, who was appalled by the use of the term "part-time" and wanted me to raise that if I spoke. He believes that being in the services is a vocation and was horrified that such a term should be used.

Before I sit down, I congratulate the noble Earl the Minister because, 235 years ago today, his ancestor relieved Gibraltar.

**Viscount Trenchard (Con):** My Lords, I, too, have some sympathy with the amendment tabled by the noble and gallant Lords, Lord Craig, Lord Boyce and Lord Walker. I hesitate to intervene in a debate in which such illustrious military leaders have spoken, but I have some experience—10 years as a Territorial Army soldier and 10 years as an Honorary Air Commodore in the Royal Auxiliary Air Force. Therefore, all of my military service, limited as it is, has been part-time.

[Viscount Trenchard]

In spite of being part-time, in both my Army unit and now my Air Force unit, we have a great esprit de corps. It used to be that regulars were, without question, full-time— 24/7, on call day and night—and TA soldiers and reserve sailors and airmen were of course part-time. Now, in my No. 600 (City of London) Squadron, I have lots of reservists who want to work full-time. The dividing line between regulars and reservists is blurring and it is a pity that the Government did not choose the option of bringing the Regular Forces and the Reserve Forces closer together. In that case, the issue would not have arisen.

Of course, notions of flexible working have to be introduced in certain areas. They reflect modern patterns of life and could be helpful in reducing the divide between the Regular Forces and the community. Unfortunately, because not enough money is spent on defence, the Regular Forces are now absent from large areas of the country, with no presence at all. Indeed, when I was chairman of the Royal Air Force Benevolent Fund, our PR advisers told us that we had to give up all our logos that said "RAF Benevolent Fund" because young people did not know what the RAF was. We had to put "Royal Air Force Benevolent Fund" in all the logos. That shows how remote from the community today the Armed Forces have become.

In certain fields, such as IT and perhaps some intelligence roles, there are people the regular Armed Forces want to retain who want to work on a flexible basis. I also do not like using the term "part-time", but I suspect that is what it means. I hesitate to disappoint the noble and gallant Lord, but I fear that I do not think the intention of the Bill is to provide only for personnel to take short-term breaks from regular service. The conversations that I have had with serving officers imply that they see in certain areas that this will be on a fairly long-term basis. Therefore, I am not sure that the noble and gallant Lord's amendment has the perfect wording. I hope the Minister will say that the Government will try to find better wording to describe the flexible type of working that is necessary in the Armed Forces and which should be introduced.

The noble and gallant Lord, Lord Boyce, is absolutely right to warn us about how the media may treat this. The *Daily Mail* or some other organ might describe this as "a part-time army" and noble Lords can imagine what they might make of that.

There is a wish to introduce flexible working arrangements. It is a pity that this has not been combined with a rethink of the divide between the reserves and Regular Forces. I do not think "part-time" is the right wording, but I regret to say that I do not think that the noble and gallant Lords' amendment has the wording absolutely right either.

*4.45 pm*

**Baroness Jolly (LD):** My Lords, the noble and gallant Lords have made the case about the phrase "part-time" clearly and with force. In Committee, the noble and gallant Lord, Lord Craig, questioned,

"the sense and the potential for misunderstanding and for belittling the reputation of the Armed Forces if the phrase 'part-time' is specifically used in the mixed and more flexible working arrangements".—[*Official Report*, 12/9/17; col. GC 59.]

I have re-read the *Hansard* report of the Committee stage and my understanding from the Minister's response there is that the wording in the Bill has been carefully crafted to ensure that protections—such as from recall to either full-time duty or deployment—are in place for any serviceperson working part-time. The Minister suggested that the Bill's wording will provide more certainty for the individual, affording them rights to remain on a flexible working arrangement that can be revoked only under certain circumstances, such as a national emergency.

However, I understand what the noble and gallant Lord is saying. I believe that it is incumbent on those who are in positions of authority to promote the measures contained in the Bill, although I feel, on my left, some discomfort coming my way. The culture needs to become more positive and not allow there to be a negative connotation that "part-time" is unprofessional, unskilled or lacking in commitment—I think that 24/7/52 is the expression that was used. Will the Minister give a commitment that, as part of the rollout of the flexible working scheme, it is made absolutely clear within the Armed Forces that neither "part-time" nor "flexible" are pejorative terms but that they carry the same level of commitment, professionalism and skill as "full-time"?

**Lord Glenarthur (Con):** My Lords, I spent a number of years as chairman of the National Employer Advisory Board for the reserves, and some of the arguments expressed by the noble and gallant Lord, Lord Craig, and others chime, in a rather reverse way, with what we were trying to achieve on flexible working. If we were looking at a civilian who wanted to spend some of their time as a reservist, could we call that civilian a part-time employee? Of course not—they are a full-time employee, released to play their part in service with the Navy or the Army or the Air Force. If we would not call them a part-time employee simply because they would be doing it part-time, is not the noble and gallant Lord absolutely right to say that to turn it round and call someone who spends time as a regular soldier, airman or naval person and has to have a break for some time a part-time employee, would simply confuse the issue? I entirely agree with the noble and gallant Lords who have spoken that it would be a big mistake indeed. I hope that my noble friend on the Front Bench will bear in mind the necessity of comparing, to some extent, the importance of employees, employers and the Regular Forces to finding a way round this particular issue.

**Lord Ramsbotham (CB):** My Lords, I note that the amendment was tabled by my three noble and gallant friends, but I plead with the Minister to remember that the Armed Forces are made up of people. I was very struck by the words of my noble and gallant friend Lord Boyce when he spoke about the impact that the phraseology "part-time" might have on the people in the services. Those of us who have had the privilege of serving in the services know only too well that we must not do anything to interrupt or damage the morale and well-being of our Armed Forces, particularly as regards the observation of what they are doing. Therefore, I strongly support the amendment.

**Baroness Butler-Sloss (CB):** My Lords, I regret that I have come rather late to the Bill. I am also one of those who has never done any form of military service, so I speak as a genuine civilian. I have been listening with great interest to the argument and it does seem to me that there are great dangers in using the phrase "part-time". I think it is a very clear case. I was particularly interested by the words of the noble Lord, Lord Condon. Will the Minister take into account what the police did when they did not use the phrase "part-time" but found other phraseology? If, in fact, there are legal reasons, as the noble Earl, Lord Attlee, pointed out—which I find difficult to understand—why "to take breaks" may not answer the case, it really is not beyond the ability of Ministry of Defence lawyers, I should have thought, to look at other phraseology, suitable for the police, that could be adapted to the armed services.

**Lord Touhig:** My Lords, before I comment on the amendment, I say at the outset that as I have reflected and listened to the debate I was very much struck by the point made right at the beginning by the noble and gallant Lord, Lord Boyce. His words convinced me that there is nothing in civilian life that compares to life in the services. We in this House and in the country must recognise that when you join the Armed Forces, it is not like joining Barclays or Tesco; you are joining an organisation in which you can put your life on the line to defend our country. We in this House and in the whole country, whenever we talk about defence, must remember that and remember that it is people we are talking about.

The noble and gallant Lord, Lord Craig of Radley, when he moved his amendment on this matter in Grand Committee, raised his concerns about the term "part-time", questioning, as the noble Baroness, Lady Jolly, has said, whether it had,

"the potential for misunderstanding and for belittling the reputation of the Armed Forces".

He therefore asked a very simple question:

"Could a better, less questionable word or phrase be used instead?".—[*Official Report*, 12/9/17; col. GC 69.]

That is at the heart of this debate.

In Grand Committee I made it clear from these Benches that we are sympathetic to the noble and gallant Lord's amendment, and that position remains unchanged. The men and women of our Armed Forces are truly exceptional. That is accepted around the world, and it is the duty of any Government to protect this reputation. However, terminology is all-important in these matters—a point I recall the Minister also making. Communication and language is complicated enough. Call me old fashioned, but I am sure that I am not alone in this House when I say that plain speaking is the best way to communicate.

In Committee we urged the Government to respond and come back at Report. In the interim, authors of various amendments in Grand Committee received very thoughtful, helpful letters from the Minister. While I accept that this is not the only concern behind the noble and gallant Lord's amendment, I was pleased to see the Minister stress that the Bill could not be used by a future Administration to force an individual into part-time working. I hope that he will repeat that today.

Of one thing I am certain, and again I echo the words of the noble and gallant Lord, Lord Craig, in Grand Committee:

"First, let me confirm my acceptance in principle of flexible schemes which are viable, enjoy service support and do not detract from the operational 24/7 capability of the Armed Forces".—[*Official Report*, 12/9/17; col. GC 69.]

We would certainly endorse that, but I am sure that I am not alone when I say that I do not want to jeopardise the opportunity to put the simple yet powerful aspiration that the noble and gallant Lord articulated so well into action. I hope that the Government will have a positive response to help us this afternoon.

**Earl Howe:** My Lords, I begin by apologising to the noble and gallant Lord, Lord Craig, and to the House for the guidance that I gave him in my letter following Committee when I said that according to the advice I had received, it would not be possible to amend the Long Title of the Bill. That advice resulted from an honest interpretation of the *Companion to the Standing Orders.* It was given in good faith but it was clearly incorrect in light of further advice from the Public Bill Office, and I am sorry.

These amendments stem from concerns previously expressed by noble and noble and gallant Lords over the use of the phrase "part-time" in the Bill; namely, that its use serves to belittle the reputation of our Armed Forces and perhaps even puts those personnel who choose to work part-time at risk of some form of denigration from colleagues amounting even to bullying and harassment, because the Armed Forces will see part-time working as somehow less worthy. I have to say to the noble and gallant Lord that I do not agree with that analysis, and nor do the service chiefs.

It is important to appreciate the context of what we seek to do. The measures in the Bill are part of a series of steps we are taking to modernise the Armed Forces' terms of service. They are entirely of a piece with some of the other forward-looking steps we have taken in the recent past, such as lifting the ban on women in close combat roles, which have helped to further modernise our Armed Forces, making them a more attractive career choice to wider sections of our society. We must continue down this path if we are to be truly representative of the people whom we serve.

As I have mentioned previously, this measure has the full support of the service chiefs. Our use of the word "part-time" is absolutely deliberate. The meaning of statute has to be clear. We want to be clear to Parliament and to our people that part-time working is indeed what we are introducing, albeit with certain constraints to protect operational capability. Personnel will be able to reduce their commitment to less than full-time and their pay will be adjusted accordingly. Whichever way one tries to explain it, this is part-time working and that is the main reason why the Bill is drafted as it is and why we continue to believe this wording to be appropriate. The noble and gallant Lord's amendment seeks to disguise what we plan to do. I do not think that legislation should ever go down that sort of path. Legislation should make its meaning clear.

The noble and gallant Lord will no doubt argue that his amendment encapsulates the Government's policy in different words. It does not. The phrase,

"take breaks from full-time service",

[Earl Howe]
could describe a variety of different things, including some of the flexible working opportunities already in place, such as unpaid leave, career intermissions and maternity leave. We are introducing something through the Bill that is distinctly different from those things and therefore the way we describe it needs to be very clear. The services are not afraid of plain language and plain language is what we are providing here.

It may help if I repeat what I mentioned in my round-robin letter—that "part-time" has been used in a previous Armed Forces Act. This is not an unprecedented use of the phrase in our legislation. It occurs, for example, in Section 2(1A) and 2(1B) of the Armed Forces Act 1966. It has never caused problems in the past. Circumlocution is therefore not only a wrong approach in my view, it is also unnecessary.

When the noble and gallant Lord advances an argument, I take it seriously, as does the Ministry of Defence, but I cannot agree with his premise. We do not accept the argument that the use of "part-time" will denigrate the individual who works under this arrangement, or denigrate the services in any way. Neither do we agree with the suggestion that those who choose to work part-time for a limited period are not the type of people we need in today's Armed Forces. On the contrary, it is arguable that those who choose to work part-time, for a temporary period, for reduced pay, rather than leave the services, display an admirable commitment to serving their country. This is precisely the calibre of person that we need to retain and recruit in today's Armed Forces.

Times move on. Working part-time is a modern, widely recognised and practised working pattern, including for those whose service and work are a vocation, to pick up the point made by the noble Lord, Lord West, quoting the noble Viscount, Lord Slim. As noble Lords may recall, I held a briefing session on 11 July this year, which some noble Lords attended, where two serving commanding officers were also in attendance. Both those officers genuinely welcomed the introduction of part-time working, which they saw as another tool to help us look after our people at times in their lives when they need it most. They had no difficulty with either the concept or the terminology we are using to describe it. The reason that they had no difficulty is that these new measures and others that we are introducing elsewhere to help improve the overall offer to our people will encourage service men and women to stay and may attract others to join.

*5 pm*

Let us imagine a serviceperson learning of a debilitating disease that is gravely affecting a close relation or partner. Because of this Bill, they are able to seek to serve part-time to care for that relative and look after their children for a short period. I think that that service man or woman would feel valued and supported, and positive about the option of part-time service—not, as some have suggested, demeaned or diminished. Far from detracting from the reputation of the Armed Forces, our judgment is, for those reasons, that these measures will serve to enhance their reputation as a modern organisation that supports its people.

I will just respond to the concern that has been expressed that personnel who work part-time may be bullied and harassed as a result. First, let me be very clear that we take a zero-tolerance approach to bullying and harassment in the Armed Forces. We have policies and processes in place which promote and sustain a culture of inclusiveness, which contributes to the moral component of operational capability. If we are presented with evidence that the high standards we expect in this regard have not been met, we will take swift action to address it. To respond to the noble Baroness, Lady Jolly, I say that we are also undertaking work to encourage the cultural attitudes and behaviours in the Armed Forces which will help to ensure that these new measures are a success. We are developing a separate plan and a stakeholder engagement strategy, and we will work closely with the services to ensure that these necessary changes are put in place.

I hope the noble and gallant Lord will not mind my pointing out a risk in the approach he has adopted. The emphasis he is placing on the word "part-time" is disproportionate to the reality of what we expect to happen. We are not talking about large numbers: we expect only a modest number of our people to either work part-time or restrict their absence from their home bases. These will not be permanent arrangements. They will last only a limited time, during which personnel will remain subject to service law, even when they are not required to be at work. They will remain an integral part of the whole force for defence, delivering this country's operational capability, and they will remain subject to the services' right to recall them from an arrangement in certain defined circumstances, such as a national emergency.

I therefore argue that the noble and gallant Lord should allow his fears to be allayed. For the reasons I have set out, I firmly believe we should let the language of the Bill remain intact. I hope that the noble and gallant Lord, on reflection, will feel similarly.

**Lord Craig of Radley:** My Lords, first I thank all those who contributed to this important debate. In his defence, the Minister has returned very frequently, as he did in Committee and earlier, to describing what is going to happen for the individual. That is all very important and very worthy, and I am not questioning that—none of us is. That is not where we are coming from. The issue is about the use of "part-time" in primary legislation when the phrase has no legal meaning and has, over the years, changed in its interpretation. How will it remain absolutely the same as it is today in 10 or 15 years' time, as he suggested, when it will by then be part of the Armed Forces Act 2006, where it will remain as a term of service? I accept that there are criticisms, which need to be looked at, as to exactly what we have proposed. But I was sincerely hoping that there would be a further chance to examine between us the way in which this extra type of flexible working can be provided for in law. Clearly he is not prepared to move even in that direction so, with reluctance, I intend to test the opinion of the House.

*5.05 pm*

*Division on Amendment 3*

*Contents 56; Not-Contents 181.*

*Amendment 3 disagreed.*

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*5.18 pm*

*Amendment 4*

*Moved by* ***Lord Touhig***

**4:** Clause 1, page 1, line 17, at end insert—

"( ) In section 373 (orders, regulations and rules), in subsection (3), after paragraph (e) insert—

"(ea) regulations under section 329(1) which make provision of a kind mentioned in section 329(2)(ha), (i), or (j),

(eb) regulations under section 329(3A),"."

*Amendment 4 agreed.*

*Amendment 5*

*Moved by* ***Lord Touhig***

**5:** After Clause 1, insert the following new Clause—

"Protection of pay and allowances

(1) Nothing in this Act shall lead to the full-time equivalent level of remuneration provided to persons serving with a regular force being reduced.

(2) In this section, "remuneration" means—

(a) basic pay;

(b) the x-factor allowance; and

(c) any other universal payments,

provided to persons serving with a regular force."

**Lord Touhig:** My Lords, Amendment 5 repeats our amendment on pay and allowances from Grand Committee. Taken together with Amendment 6, it offers greater protection and security to our service men and women who may need to use the option of flexible or part-time working as described and set out in the Bill.

I was grateful to the Minister for his response in Grand Committee and for following it up with letters to me and to other noble Lords. In Committee, the Minister offered reassurances, saying that,

"the introduction of part-time working will not be used to lower the full-time equivalent basic rate of pay, the x-factor allowance or any other universal allowances or payments available to personnel".—[*Official Report*, 12/9/17; col. GC 95.]

This commitment was very much welcomed. As we have seen on so many occasions, the views of one Minister cannot be taken as representative of the views of all future Ministers, although we on this side hope that this particular Minister stays for a long time yet. I hope that the Government will accept this and feel able to put our amendment into the Bill, thus demonstrating commitment to our hard-working service men and women.

I now turn to the existing options for flexible working and, in doing so, seek to build a bridge to demonstrate that there is a clear link in the objectives of these two amendments. In a letter that the Minister sent last month, he outlined three options for flexible working that now exist: working from home, compressed hours and variable start and finish times. His letter explained in detail how these options work and, while this information was welcome, I look for assurance that the three flexible working options will continue to be available alongside the new part-time working arrangements enshrined in the Bill. The Minister's letter did not quite make that clear. The letter said that existing flexible working arrangements recognise that a small variation in an individual's working arrangements can have a positive impact on their working lives, which is true. It went on to say that there will be circumstances where existing options will not be sufficient and a significant reduction in working hours over a longer period can be facilitated by a part-time working arrangement.

Those arguments might seem perfectly reasonable, but I have some concern. Many service personnel, faced with some domestic or other problem causing them to seek to change their service work commitment will, nevertheless, have great difficulties if the only option on offer involves a cut in pay and a reduction in pensions. Bearing in mind that part-time working, as set out in the Bill, will involve a cut in pay and pensions, can the Minister assure us that each application for changing service work commitment will be looked at on its merits and that using the flexible working options that he outlined will be considered alongside the part-time working arrangement?

I turn to Amendment 6, which relates to the future status of Joint Service Publication 750, which outlines the range of flexible working options that I have just spoken about. It had been a concern of all sides that the introduction of part-time working—which, as I have said, will take a proportionate amount of pay and pensions from applicants—was a drastic overreaction to a genuine need for greater flexibility. I know that the Minister will not accept that, but he is aware of the concerns on this point. We were pleased, therefore, with clarification on the provisions of JSP 750 and the anticipated take-up of the part-time offer. I believe that many of the worries expressed across the House have been addressed by the Minister's response. However, while part-time working will have a statutory footing following the passage of this legislation, this is not true of the existing flexible working options.

This amendment seeks to ensure that the options in JSP 750 will continue to be available and that, if that document is ever withdrawn by a Secretary of State, regulations must be brought forward to make a similar provision. I beg to move.

**Baroness Jolly:** My Lords, in this group I will speak to Amendment 7. We all want flexible and part-time working to be a success. Therefore it is important to monitor whether these arrangements are helpful in convincing some who may not have ordinarily thought of joining the Armed Forces so to do—I beg your Lordships' pardon. I am very sorry, I am speaking to the wrong group.

**Earl Howe:** My Lords, I believe that I spoke to an identical amendment as the first in this group in Grand Committee—it was then Amendment 9, I think. I hope that what I am able to say today will reassure the noble Lord completely. The Bill will allow the Defence Council to make regulations to give regular service personnel the right to apply to vary temporarily the terms on which they serve. Specifically, the Bill will allow us to introduce both part-time working and a new form of geographically separated service into the Armed Forces, which together we refer to as "flexible working".

I am grateful to those noble Lords who have expressed their agreement with the principle that it is fair and appropriate for those regular service personnel who elect in the future to vary the terms on which they serve to see a commensurate variation in the reward that they receive.

I should say up front that nothing in the Bill enables us to do what the noble Lord fears we might do. At present, we envisage that those who work part-time will have their pay proportionately reduced, and those who reduce their liability for separated service will have their x-factor reduced by an appropriate proportion, which we will discuss with the Armed Forces' Pay Review Body.

As I said in Grand Committee, we have worked—and continue to work—closely with the services to ensure that any reduction in pay, or other benefits, for those who successfully apply to work part-time, or reduce their liability for separated service temporarily, will be, above all else, fair and reasonable to those who work under the new arrangements as well as to those who do not. For reassurance, I will repeat what I said at Second Reading and in Committee: the Bill will not result in any reduction in the basic pay, x-factor or other payments available to regulars who do not take up these new flexible working arrangements. There is a simple reason I can be categorical about that: the Bill deals only with the proposed new types of flexible working. The legislative provisions that govern the pay and conditions of full commitment regulars are contained in different sections of the Armed Forces Act 2006—as the noble Lord will know, having very successfully taken that Act through this House as a Minister in the then Government.

As the noble Lord of course understands, we envisage at present that those who work part-time will have their pay proportionately reduced, and those who reduce their liability for separated service will have their x-factor reduced by an appropriate proportion. As I have said, noble Lords will be aware that the Armed Forces' Pay Review Body has a responsibility to make recommendations on service pay. It does that through its annual report, which makes recommendations to the Government on an annual Armed Forces pay award, based on a body of evidence gathered from service personnel and their families and the MoD. It also commissions its own analysis and research from other bodies. Accordingly the MoD will engage with the AFPRB and submit a paper of evidence for its consideration on the changes we need to make, in time for the introduction of the measures contained in this Bill from 2019.

I hope there are no lingering concerns that service personnel may be made to work part-time as a savings measure. The regulations under the Bill will make it clear that any application for part-time working or restricted separation must be made by the serviceperson. I am therefore clear that the Ministry of Defence will not be able to impose a change in working pattern on individuals, and that any such change will have to be instigated by the individual. I can reassure the noble Lord, Lord Touhig, that the measures in this Bill will be considered alongside the existing provisions for flexible working that he referred to, so that service men and women will have those options open to them and can accordingly choose the road they go down.

Amendment 6 seeks to protect existing flexible working arrangements. The new flexibilities that this Bill will introduce are part of a series of steps we are taking to modernise the conditions of service we offer to those who serve, and for those who are considering a career in the services. The long-term aim, as I have mentioned, is to improve recruitment and retention in the Armed Forces. We are constantly looking forward and trying to reflect wider best practice in the development of our personnel policies, and we are making good progress. This is the least that our people deserve. In terms of the flexible working options that the Ministry of Defence already provides, such as variable start and finish times, home working and compressed hours, we have over the past two years continued to add to and refine the policies that support them to ensure that they are the best they can be, and we will continue doing so.

As with any HR policy operated within other organisations, it is essential that we have the ability to manage and adjust our flexible working policy to meet the emerging needs of our people and the services. These policies are published in Joint Service Publication 750, a document available to all personnel, to ensure clarity, coherence and transparency for both service personnel and their chain of command. The House can be absolutely assured that we have no intention of withdrawing these existing opportunities for flexible working, which are now well published and in operation in each service. Some have been on offer to our people since 2005 and others have been developed to meet their need for a degree of flexibility in the modern world. To reduce the flexible working options, which is the implied concern in the noble Lord's amendment, would be a retrograde step given our objective of modernising the Armed Forces offer and would run counter to our aim of increasing the flexibility available to meet our people's needs.

To be crystal clear, though, to your Lordships, the flexible duties trial that is not part of JSP 750 policy and has been run to help inform the new part-time and geographically restricted service will of course cease when the new arrangements become available to supersede it. However, that is the only exception to what I have laid out. Following these assurances and the circumstances I have outlined, I hope that the noble Lord, Lord Touhig, will feel comfortable in withdrawing his amendment.

*5.30 pm*

**Lord Touhig:** My Lords, the Minister was right when he said that I had some responsibility for the 2006 Act. I introduced the Bill, but I can take no credit for its passing because, before it did so, the then Prime Minister rang me to award me the DCM—"Don't Come Monday"—and I was no longer a Minister, so I never actually saw the Bill through. Nevertheless, I was responsible for introducing it.

I thank the Minister for his positive response, which reassured me. We do not want to abandon what has already become established and is worth while, so I hope that the Government will see that through, as the Minister indicated. I beg leave to withdraw the amendment.

*Amendment 5 withdrawn.*

*Amendment 6 not moved.*

*Amendment 7*

*Moved by* ***Lord Touhig***

**7:** After Clause 1, insert the following new Clause—

"Inclusion in the Armed Forces Covenant Annual Report

(1) Section 343A of the Armed Forces Act 2006 (armed forces covenant report) is amended as follows.

(2) After subsection (3), insert—

"(3A) In preparing an armed forces covenant report the Secretary of State must—

(a) outline the options available to persons serving with a regular force in relation to part-time working and serving subject to geographic restrictions; and

(b) provide his assessment of what impact the options in paragraph (a) have had on recruitment and retention.""

**Lord Touhig:** My Lords, Amendment 7, if accepted, would afford the Government the opportunity to enhance the value of the Armed Forces covenant annual report. The Government deserve credit for the full implementation of the covenant and for ensuring that there is an annual report. The report shines a light on the way this country treats those who put their lives on the line to defend our freedom. It is made even more valuable by the fact that there is an external members reference group which can pick and choose what it wants to consider and comment on. So why not go one step further and ensure that, when preparing the report, the Secretary of State for Defence must take into account the two tasks that would be placed on him by paragraphs (a) and (b) in this amendment?

We discussed this in Committee and have returned to it again on Report because, on reading the *Hansard* report of the Committee's deliberations, there seemed to us to be some ambiguity in the Minister's response. In replying to me, he said:

"I share the view of the noble Lord about the importance of measuring and reporting on the impact of the changes that will be introduced through this Bill. I want to ensure that it is done in the most appropriate and effective way for both the MoD and Parliament".

However, he concluded:

"it is likely that a future report will include a section on the introduction of the measures included in this Bill … That would be entirely appropriate".—[*Official Report*, 12/9/17; cols. GC 99-100.]

This debate is really about allowing the Minister the opportunity to state without any doubt that a report on the measures included in this Bill will be included in the annual Armed Forces covenant report. I beg to move.

**Baroness Jolly:** My Lords, I apologise to the House for jumping the gun earlier.

We all want to make flexible and part-time working a success, and it is therefore important to monitor whether these arrangements are helpful in convincing some who might not ordinarily have thought of joining the Armed Forces so to do, or in persuading some existing members to remain in the Armed Forces if they were considering leaving. The Armed Forces covenant annual report is the report on the state of the armed services to the nation, so I ask the Minister not to close the door on this level of reporting. It would be helpful if he could assure the House that, in the future, the MoD would consider doing just this.

**Earl Howe:** My Lords, I fully agree with the noble Lord, Lord Touhig, and the noble Baroness about the importance of measuring and reporting on the impact of the changes that will be introduced through this Bill. As I have mentioned a number of times previously, we expect a modest, yet significant, number of our people to take up the new opportunities this Bill will introduce. Therefore, we must ensure that our reporting on this subject is both appropriate and effective for the MoD and Parliament.

I am pleased that noble Lords recognise that the long-term aim of providing these new arrangements, alongside a range of other measures, is to modernise the terms of service and, ultimately, improve Armed Forces recruitment and retention. As we have discussed previously, the changes we are introducing do fall within the scope of the Armed Forces covenant. Noble Lords may recall that I said, in Grand Committee, that it was likely that a future report on the Armed Forces covenant would include a section on the introduction of the measures included in this Bill and their effect.

The current wording of Section 343A, inserted by the Armed Forces Act 2011, which places the obligation on the Secretary of State to lay an annual report on the covenant before Parliament, directs him in preparing the report to,

"have regard in particular to … the unique obligations of, and sacrifices made by, the armed forces; … the principle that it is desirable to remove disadvantages arising for service people from membership, or former membership, of the armed forces".

It also advises the Secretary of State to include,

"such other fields as the Secretary of State may determine".

We judge that this broad wording is sufficient to deliver the specific outcomes that the noble Lord seeks and, therefore, does not need amending as proposed.

There is a good reason why I am confident in saying that. A look back at the five Armed Forces covenant reports that have been produced since 2011 confirms that they contain a very broad spectrum of information and data on policy developments that have fallen within the covenant's scope. A good example of that is the Forces Help to Buy scheme, introduced in 2014, under the new employment model. The scheme has featured regularly in annual reports, and the figures for August 2017 show that, since its launch, more than 12,000 of our people have benefited from the scheme, having received some £184 million to help them get on, or stay on, the property ladder.

A key feature of the reporting has been a description of the nature of the policy change being brought in and, where possible, a measure of its impact following introduction. I can undertake that we will take the same approach to reporting on the introduction of the flexible working opportunities from 2019. Those opportunities will, in the long term, improve recruitment and retention in the Armed Forces and, in the near term, our people will see improvements in their terms of service, and they will benefit from the increased level of personal control over their careers that the new flexibilities will bring. We will ensure that we capture the introduction of the policy change in reports on the Armed Forces covenant and, where possible, a measure of the impact following its introduction from 2019 onwards.

For these reasons, we judge—and I hope the noble Lord will draw the same conclusion in light of what I have said—that it is unnecessary to create legislation requiring the Secretary of State to report on the new measures that this Bill will introduce. I hope, following the assurances I have given, that the noble Lord, Lord Touhig, will agree to withdraw his amendment.

**Lord Touhig:** My Lords, I thank the Minister for his reply. I do not have the copper-bottomed "will" that I sought, but in this case I have to say "near enough is good enough" and I will therefore withdraw my amendment.

*Amendment 7 withdrawn.*

*Amendment 8 not moved.*

*Amendment 9*

*Moved by* ***Baroness Smith of Newnham***

**9:** After Clause 1, insert the following new Clause—

"Accommodation

After section 329 of the Armed Forces Act 2006 insert—

"329A Accommodation

(1) A person to whom section 329(2)(ha) applies is entitled to service family accommodation or single living accommodation.

(2) Six months after section 329(2)(ha) comes into effect, and every three years thereafter, the Secretary of State must lay a report before both Houses evaluating the impact of that section on family accommodation and single living accommodation, and providing information on future accommodation needs in the light of trends of serving on a part-time basis.""

**Baroness Smith of Newnham:** My Lords, this amendment, too, replicates an amendment that was brought in Committee and refers to an issue that is fundamental to recruitment, retention and forces' welfare, as well as the welfare of forces families: accommodation. In his response in Committee the Minister suggested that the numbers of people who might avail themselves of the opportunity to work part-time under the arrangements of the Bill would perhaps be sufficiently limited that they would not impact on forces accommodation. The idea was welcomed that all members of Her Majesty's forces, whether full-time or part-time, if they are regulars, would be entitled to the same accommodation provisions.

However, if more people are acquired because some people work part-time, so that you might have three people instead of two people doing the job, each of those individuals would be entitled to accommodation, and at some point this might have an impact on the requirement for accommodation as a whole. Clearly, as the Minister stated in the discussion on Amendment 7, there may be cases where this will be overcome by Help to Buy and through the new employment model. However, to the extent that this is not the case, it is hugely important for service men and women and their families to believe that Her Majesty's Government will provide adequate accommodation for them.

For that reason, we have again tabled an amendment on accommodation, both to restate that service men and women who avail themselves of this flexible model are entitled to appropriate family accommodation or single-living accommodation, and, perhaps more importantly in the longer term, to have certainty that the Government are reviewing what forces accommodation is available and whether it will be suitable for the number of service men and women we have.

One of the key things is what is available and habitable and the extent to which the accommodation, and the maintenance contracts which deal with it, are fit for purpose. We have been told on various occasions that CarillionAmey now meets its key performance indicators, yet there are still many complaints. If it meets its key performance indicators, does that mean that they are not the right ones? While this might not be the appropriate amendment to bring that forward, it would be welcome if the Minister could at least explain when we might be able to discuss such things.

**Lord Touhig:** My Lords, I am grateful to the noble Baronesses, Lady Smith and Lady Jolly, for tabling a further amendment on service accommodation. As the noble Baroness, Lady Smith, noted in Committee, there are already significant pressures on service accommodation, and that is before we even begin to consider the move to the future accommodation model from 2019.

I will not go into the detail about our concerns on the future accommodation model, but clearly there are urgent questions for the Government to answer on how the Bill will affect personnel who rely on service accommodation, particularly when the system is shaken up. There will also be more questions for the Government to answer in the future as the new system is rolled out. I am therefore glad to see the addition of the second part of Amendment 9, which would require the Secretary of State not only to provide a periodic snapshot but to be proactive in anticipating future accommodation needs. I hope that the Minister will provide us with some answers—perhaps in a further round of letters before Third Reading—and offer a firm commitment; it is important that these things are reported back to Parliament.

**Earl Howe:** My Lords, Amendment 9 is similar to the amendment to which I spoke in Grand Committee—I think it was Amendment 13 on that occasion—which sought to amend the Bill to ensure that personnel who successfully apply to work part-time will still be entitled to service family accommodation and resettlement support.

The noble Baroness, Lady Smith, will recall that during discussions in Grand Committee I provided assurances that regular service personnel undertaking part-time working would retain the entitlements currently available to full-time regulars. I was able to give those assurances because providing our people with service accommodation is pivotal to the work we are doing to enable personnel and their families with mobility in support of defence capability.

To support my earlier reassurances, I stress again that regular service personnel who successfully apply to work part-time following the introduction of these new measures will be entitled to service accommodation commensurate with their personal status category and other qualifying criteria in the same way as their full-time colleagues. There is no reason to alter the entitlement to accommodation for those who undertake part-time working in the future since these individuals will retain an enduring liability for mobility and will still be subject to the same moves associated with new assignments as others in the regular Armed Forces.

*5.45 pm*

Having said that, defence recognises that the current system for accommodation can be unaffordable and inflexible and that it does not support personnel to live in the way that many of them want to live today. Currently, around 20% of personnel opt out of subsidised accommodation because it does not work for them. We are reforming the accommodation model so that all regular personnel can receive support to live how they want to. We recognise the need to offer accommodation that meets their needs and expectations today and in the future.

I spoke during Grand Committee of the future accommodation model—FAM—project that is due to be introduced in 2019 as part of the defence people programme. FAM is currently exploring options for a more flexible accommodation offer to give service personnel more choice in how they live and to offer accommodation based on need, not rank or marital status. Extensive work is being undertaken to consider a wide range of options, from widening entitlement based on the current model of service-provided accommodation, through to making greater use of the private market by providing a subsidy to help more personnel live in private accommodation, including by helping to meet their aspirations for home ownership. We hope to be able to say more about this by the end of the year. However, the key assurance I wish to give to the noble Baroness is that eligibility under FAM will not be altered or subject to geographical restriction for those personnel who work part-time when the new measures come into force.

Support for service families has been a recurring theme during the Bill's reading in this House. That is wholly appropriate because it lies at the very heart of the work we are doing to support our people. I feel it is important to reaffirm the point that I have made throughout, which is that enhanced flexible working options are about providing opportunities for our people who want to work more flexibly and not disadvantaging them or their families by limiting access to support and entitlements. We are not in the business of providing new opportunities to our people in one breath and disincentivising them on their accommodation in the next.

The noble Baroness seeks through this amendment to commit defence to providing information on future accommodation needs in the light of trends of serving on a part-time basis. I have said before that we expect a small yet significant number of personnel to undertake flexible working. I think that the noble Baroness understands that the long-term impact of these new options will be difficult to assess in the early years of implementation. For these reasons the impact on service accommodation is likely be minimal, but it will also be challenging to measure, particularly in light of the fact that there are no plans for the entitlements to be altered. That is not an attempt to dodge the issue, because I am able to say that we are considering options to include questions on accommodation provisions in the Armed Forces continuous attitude survey to help us better understand the impact of FAM on retention when the new model is introduced.

With all this in mind, we will work closely with the services to monitor the impact of these new measures on personnel who choose to work part-time and aim to report any findings in the Armed Forces covenant annual report.

I am very willing to have a meeting with the noble Baroness to discuss repairs and maintenance of the defence estate, which falls slightly outside the scope of her amendment, but I hope that, for the purposes of the amendment, she has been reassured by what I have been able to say today and that she will agree to withdraw it.

**Baroness Smith of Newnham:** I thank the Minister for his very full reply. It would be nice to think that Her Majesty's Government as a whole and, in particular, the Chancellor of the Exchequer will ensure that the money put aside for defence will enable all those words to be brought about in practice and that we do not need to worry about the money that will be put aside for accommodation. In the light of the discussion about the future accommodation model, the idea that proposals will come forward later in the year and the suggestion of putting questions into the Armed Forces covenant report, I am content to withdraw the amendment. However, I should very much like to take the Minister up on his suggestion of a meeting.

*Amendment 9 withdrawn.*

***Clause 3: Short title, commencement and extent***

*Amendment 10*

*Moved by* ***Lord Touhig***

**10:** Clause 3, page 2, line 25, leave out "section 329" and insert "sections 329 and 373"

*Amendment 10 agreed.*

***In the Title***

*Amendment 11 not moved.*

## European Union (Approvals) Bill

*First Reading*

*5.51 pm*

*The Bill was brought from the Commons, read a first time and ordered to be printed.*

## Farmer Review

*Question for Short Debate*

*5.51 pm*

*Asked by* ***Lord Farmer***

To ask Her Majesty's Government what progress they have made in implementing the report from the Farmer Review, *The Importance of Prisoners' Family Ties for Reform: Preventing Reoffending and Reducing Intergenerational Crime*.

**Lord Farmer (Con):** My Lords, I am grateful for this opportunity to discuss the final report from the review with so many whose experience and expertise in the broad area of prison reform far outstrip my own. Indeed, some of your Lordships were named in it as major contributors to this vital area. I am looking forward to their speeches today, the content of which will, I am sure, add depth to the work of the review and give the Government much to think about.

I was asked by the Ministry of Justice to study the importance of strengthening prisoners' family ties to preventing reoffending and reducing intergenerational crime. I will talk a little about what we found and recommended under the three main headings of culture, consistency and safety.

Before doing so, I must rebut the friendly fire that the report drew from honourable Members on Conservative Benches in the other place. Although I am sure their hearts were in the right place, the main criticism was that I seemed to have forgotten the victims of crime. My remit, I repeat, was to reduce reoffending and intergenerational crime. Research shows that better contact with families can achieve both, as I will make clear.

Far from being victim-blind, such a remit prioritises victims, albeit implicitly. Less reoffending means less crime and therefore fewer victims and fewer future prisoners, and therefore less cost and fewer family members themselves serving a sentence for crimes the parent or partner inside committed—an altogether safer society.

As I say in my foreword:

"This report is not sentimental about prisoners' families, as if they can, simply by their presence, alchemise a disposition to commit crime into one that is law abiding. However, I do want to hammer home a very simple principle of reform that needs to be a golden thread running through the prison system and the agencies that surround it. That principle is that relationships are fundamentally important if people are to change".

I have talked before in your Lordships' House about the fundamental importance of human relationships for all of us. Ensuring that as many prisoners as possible have relationships that are strong and stable—I must admit that I hesitated to use that phrase—must be a golden thread running through prison reform and the entire estate.

Therefore, this review calls for cultural change—for relationships to become valued and to be seen as indispensable to the Ministry of Justice's priority of preventing reoffending. We also need a broader change in the culture of government: all departments need to recognise that positive family relationships are as important for children's and adults' lives as education and employment. This came home to me forcefully when I first began to look at the research on rehabilitation. Learning a trade and improving one's education are clearly essential if someone is to stay on the right side of the law when they leave prison. Healthy, stable relationships provide motivation, yet the role that family and other relationships can play in reducing reoffending is rarely mentioned when politicians and others talk about rehabilitation.

Given that, on average, 43% of prisoners reoffend, at a cost of £15 billion a year, I suggest that we are not doing terribly well at reducing reoffending and that something is missing. Putting it another way, education and employment are only two legs of the rehabilitation stool—and we are surprised that it keeps falling over. Enabling prisoners to maintain and improve family relationships is the third leg of that stool, and this is not the soft option. It can be extremely painful for men to be brought face to face with their family responsibilities and with the effect of their crimes on their partners and children, and more powerful than anything else in convincing them to change their ways.

Almost two-third of prisoners' sons commit crimes themselves. When a father decides to go straight and put his children first, this can break the cycle of intergenerational offending. Prisoners who receive visits from a family member are 39% less likely to reoffend than those who do not. Therefore, when considering prisoner location, the norm should be that men are kept within their region and, if moved out for tactical management purposes, brought back as soon as possible. The new prison in north Wales, HMP Berwyn, will house many man who are a long way from home. It is encouraging that, from the outset, planning has sought to mitigate the negative effects of this—for example, by appointing a senior uniformed member of staff as children and families manager, a first in the Prison Service.

My second point is the unacceptable inconsistency of respect for family ties across the prison estate. Only half of all public sector prisons had visitor centres run by specialist voluntary sector organisations. The good family work in Norwich prison was backed by a far more outward-looking approach than others I visited. The report refers to the "extrovert" prison, which instinctively looks over the prison walls for resource and aims to be a resource in the community. Norwich's deputy governor holds regular surgeries with family members to get their input when there are difficulties with prisoners. Category D prisoners run a cafe, which is so good that it is on the tourist bus route. I also saw "introvert" prisons, where grandparents who had travelled more than 100 miles were kept waiting in a dingy, crowded room with other weary and anxious visitors, but there were no refreshments or other facilities.

In my recommendations, I outlined a local family offer for inclusion in the MoJ's new policy frameworks to drive a consistent approach. Every prison needs a visitor servicing centre. It also needs staff who make family work an operational priority. Offenders' families have, after all, been described by the Chief Inspector of Prisons as the "most effective resettlement agency". For example, officers should run visits with the attitude that family members are assets. HMP Parc in Bridgend, south Wales, welcomes families with a courteous customer service mentality akin to good airport security. Some prisons treat families as an inconvenience at best, criminal themselves at worst. Every prison needs extended visits, where families can spend longer with prisoners in less formal surroundings. It needs family skills learning, so that prisoners learn how to be a better parent and partner inside prison and eventually outside prison. Finally, it needs a gateway communications system. If families have concerns about someone in prison, being able to communicate those to the right member of staff could save lives.

[Lord Farmer]

That takes me to my third point; the importance of families to safer custody. Men who stay in touch with their children and have a sense of responsibility towards them have a big incentive to stay out of trouble and drug-free. I saw fathers supporting other fathers to keep their noses clean. As one man said, "If I'm talking to my child at 6 pm to find out how he's doing, I don't want to be off my head on drugs". Lack of contact with families is also a key factor in violence, self-harm, suicide and poor mental health. Prisoners need relationships to motivate them and give them hope—they are no different from the rest of us.

The additional 2,500 prison officers, who will give a ratio of 1:6 of officers to prisoners, are essential if they are to have the time to relate to the men in their care. Officers told me that they were so busy they felt deskilled. They were losing the ability to develop a rapport with the men on their wing and in so doing obtain vital insights into their state of mind. Training for new officers must include these vital relational skills.

The Ministry of Justice is now implementing the review, and this debate will be invaluable for its deliberations as it moves forward. I look forward to hearing my noble friend's response to the wisdom of other noble Lords who have kindly made the time to speak today, as well as to the progress that she can report on the implementation of this review.

*6 pm*

**Baroness Healy of Primrose Hill (Lab):** My Lords, I very much welcome this debate and congratulate the noble Lord, Lord Farmer, on his impressive report. I warmly welcome his recommendations, which I trust the Government will implement urgently. Only by improving the mental health and well-being of people while in prison can reoffending be reduced. I would like to highlight many of the recommendations but time does not permit, so I will just say that the call to make more use of release on temporary licence is welcome. This would go some way in helping to maintain family links and ensure that relationships are nurtured not ruptured.

Although the review's remit was to focus on the family relationships of men in prison, I would like to highlight the significance of family ties for women who are in prison, especially mothers with dependent children. Too often, women are unlikely to receive visits while incarcerated. They are imprisoned further from home than men. That adversely affects their capacity to maintain relationships and family contact. Research suggests that half of all women on remand receive no visits, compared with one-quarter of men. Prisoners who receive no visits are significantly more likely to reoffend than others who do.

The closure of HMP Holloway is relevant to this debate. The final independent monitoring board report on Holloway stated that women were anxious about moving further from home and worried,

"that their families and children might not be able to visit them as often or at all".

The closure of Holloway in June 2016 and a significant court realignment have meant that all women sentenced to custody by Greater London courts are sent to HMP Bronzefield in Surrey. Whatever the good intentions behind the closure, it has caused significant disruption and disadvantage to women in London who are given custodial sentences, and to their children and other family members.

Visiting London women in prison, or providing services to them in prison or through the gate on release, is now more difficult and expensive for family, friends and support services. The noble and learned Lord, Lord Woolf, recommended in his 1991 report that there should be:

"Better prospects for prisoners to maintain their links with families and the community, through more visits and home leaves, and through being located in community prisons as near to their homes as possible".

We need to stop sending women to prison on short sentences for non-violent crimes. Approximately 26,000 women are arrested each year in London and 1,200 women were sentenced to immediate custody in 2016. Many of those women returned to London with no homes or jobs to go to, resulting in a high risk of reoffending. The Prison Reform Trust, to which I owe my thanks, has proposed that a percentage of the proceeds from the sale of the Holloway site must be reinvested in community services—ideally a woman's centre providing a range of services including mental and physical health care to vulnerable women. The women's centre model, recommended by my noble friend Lady Corston in her report a decade ago, represents the most effective and financially sustainable alternative community use. Imprisoning women for non-violent offences not only impacts adversely on them but on their children, 17,240 of whom are separated from their mothers each year.

Women in prison are far more likely than men to be primary carers of children. A prisoner survey found that six in 10 women in prison had, on average, two dependent children. Children with imprisoned mothers are one of the most vulnerable at-risk groups and often experience multiple disadvantages and trauma. Ending the incarceration of women with dependent children will help reduce intergenerational crime.

*6.05 pm*

**Lord Ramsbotham (CB):** My Lords, I congratulate the noble Lord, Lord Farmer, on the way that he introduced his excellent report. I applaud the depth of his recommendations, which is due in part, I have no doubt, to his inclusion of so many experienced people in his task group. I also applaud that, unlike too many Secretaries of State and officials in, first, the Home Office and, then, the Ministry of Justice, he has drawn on recommendations made as long ago as 1991 by my noble and learned friend Lord Woolf in his masterly report on the 1990 prison riots, particularly that there should be:

"Better prospects for prisoners to maintain their links with families and the community, through more visits and home leaves, and through being located in community prisons as near to their homes as possible".

Since being appointed Chief Inspector of Prisons in 1995, I have never ceased to be amazed that no Secretary of State has implemented any of the 12 carefully thought-through ways ahead for the Prison Service set

out in the 1991 White Paper, *Custody, Care and Justice*, that followed my noble and learned friend's report, which included direction that:

"Prisoners should be held in prisons suitable to their status and security category as near to their home as possible, unless they request otherwise … Location near to home is likely to lead to greater stability in prisons, and will enable programmes to be linked more closely to the opportunities available to the prisoner after release".

Based on the patchy performance that the noble Lord, Lord Farmer, saw during his prison visits, he rightly draws attention to the need for the Secretary of State to be responsible and accountable for ensuring that family ties are consistently treated as important across the prison estate. I am afraid that it is wishful thinking to assume that the prison system will automatically respond to direction, even from the Secretary of State, because the Prison Service, unlike every business, hospital and school, does not have named people responsible and accountable for different functions. I have been pointing that out, and questioning it, for the last 22 years.

I would like to suggest two adjustments to the noble Lord's recommendations about empowering prison governors. Of course governors are responsible and accountable for everything that goes on in their prison, but unless there is someone above them to whom they are themselves responsible and accountable, there is no way that Secretaries of State can rely on any recommendation being implemented or expect any consistency of implementation. I suggest, as I recommended in my annual report for 1997, having seen them in operation in prisons in Scotland, that every governor should appoint a family contact and development officer—FCDO—responsible and accountable for overseeing all family contact arrangements, above whom the Prison Service should appoint an FCDO who is responsible and accountable to the Secretary of State for overseeing the consistent treatment of family ties throughout the prison estate, on whom governors can call for advice, and with whom NGOs and others working in the area can have a point of contact. Unless those appointments are made, I predict that—as has been the fate of literally hundreds of reports and thousands of recommendations over the years—neither the noble Lord's admirable report nor his recommendations will long survive their initial acknowledgment, because no one in the prison system is responsible and accountable for their survival.

The point that I am making is that there is a grave danger that all the hard work and deep thought that the noble Lord, Lord Farmer, and his task group have put into this admirable and helpful report will be wasted if they merely receive the Ministry of Justice's habitual response to any outside advice, which is studiously to ignore it. I therefore beg the Minister to do everything in her power to ensure that action is taken to prevent that happening.

*6.10 pm*

**The Lord Bishop of Rochester:** My Lords, I, too, welcome this report and I am very grateful to the noble Lord, Lord Farmer, and his team for producing it and for providing the opportunity for this debate today. The report itself, as noble Lords who have read it will know, is comprehensive, cogently argued, full of detailed supporting material and, importantly, highlights a number of innovative responses in various places across the prison estate. In summary, a clear case is made for nurturing healthy relationships for those in prison and the connection between that and rehabilitation and reoffending.

I note, and I do not know whether this is connected in any way, that the new *Expectations* used since last month by Her Majesty's Chief Inspector of Prisons mentions the importance of family rather more frequently than previous editions. Indeed, it is mentioned some 34 times; for example in sections covering first night and induction, self-harm, diversity, healthcare and rehabilitation. Indeed, family is there right at the beginning of the section on rehabilitation and release planning, covering some three pages. I take some encouragement from that and I hope the Minister will indicate that that is a sign to us that these things are being taken on board. I hope that, since Her Majesty's chief inspector is taking these things into account when inspecting prisons, that will give some accountability and some possibility of monitoring, but there is clearly a question around that.

Others have mentioned closeness to home and the importance of geography. It is a reality that some of the innovative schemes and programmes mentioned here, not least school connectivity around HMP Parc, just cannot happen unless the schools at which the prisoners' children are being educated are closely proximate to the prison. This is a particular issue in London and the south-east, where prisoners are scattered over a huge area; we really need some will to tackle that issue and make it work, otherwise these really good aspirations will unfortunately fall. There are some really good examples around and we need to see them replicated, but there are things inherent in the system that militate against that.

I am grateful for the mention of chaplaincy in paragraph 104. I want to renew the offer of churches and faith communities in that regard, because chaplaincies and chaplaincy volunteers are often the go-between people, not least because of our connection with faith communities outside. I put that on the table afresh and I know that many would join me in affirming our desire to work around these issues because of the reality that we are in touch with the prisoners in prison and in the communities where their families are. That connection can be really helpful especially where there is geographical distance—the chaplain can be on the phone to the local minister, the youth worker or whoever it is, and make those connections. The Catholic Bishops' Conference has mentioned to me the example of a chaplain keeping in touch with a prisoner's girlfriend through the stages of her pregnancy and being able to reassure the prisoner, who was deeply anxious. These are very practical, small-scale things.

While not a direct focus of this review, the review itself has inevitably raised for me the question of those prisoners for whom there is no identifiable family. If it is the case that family relationships aid rehabilitation and reduce reoffending, what of those for whom such relationships are not possible? I raise the question for myself as much as for other noble Lords: is there something creative and imaginative that could be done

[The Lord Bishop of Rochester]
around an equivalent of fostering for former offenders, whereby we put relationships in place that can fill that gap? The lessons here could be applied in such ways.

*6.14 pm*

**Baroness Sharples (Con):** Before I came to your Lordships' House some 44 years ago, I was fortunate enough to be a volunteer in the prisoners' wives association, run by a splendid woman, Lady Chancellor. I had a number of wives to visit and their main concern was that they had only one free ticket a month to visit their husbands. These women were mostly in a pretty bad way. I remember hearing the clink of bottles being pushed under the bed on one visit. Is the Minister satisfied with the progress made since those days, because the future of the children is the most important matter?

A number of years ago when I was chairman of the Television South trust we gave £30,000 to a writer in residence in Lewes prison. I wonder if that has been followed up.

*6.15 pm*

**Lord Judd (Lab):** My Lords, I, too, thank the noble Lord, Lord Farmer, for introducing this debate—not only for that, but for all his consistently committed work in this context.

For those of us who have had any experience of dealing with offenders, one thing that becomes very obvious is that many—not all—are themselves also victims. They have had the most appalling experiences in life. Sometimes I have reflected that it would be quite remarkable if they had not ended up in prison.

We need to ask ourselves why because, if we are going to get this right, we have to be brave enough to face the ugly, challenging answers that may come from asking the question. Surely, for all of us who want to make any claim to belong to a civilised society, the death rate in our prisons and young offender institutions is a nightmare. It is an absolute disgrace and we should all have it on our conscience. The self-harm, self-abuse and brutality are all things that we should all be concerned about. In the case of all these characteristics, it is again very important to ask why.

I tremble when I see that the great solution to so many of the pressures at the moment is seen to be in the new large prison that is to be built and which, apparently by its efficiency and productivity, will reduce many of the statistics to reasonable proportions. I personally think this approach is compounding what is wrong. Offenders need to be part of a community. They need to be part of a small institution that has been appropriately designed for the many different situations that confront people, where they can find a place. If we are to achieve our objective of rehabilitation —we would be a mad society if we did not say that rehabilitation must be the primary objective—we must enable people to become positive citizens and positive members of the community. If we are to get this right, relationships and being able to form stable relationships are critically important.

I will finish with an anecdote. I was privileged to see a former chief constable who had quite a reputation for toughness at work in retirement as a volunteer in a young offender institution. I remember him telling me, with tears in his eyes, how disturbed he had been because he had been talking to one of the young offenders who was about to be released and the young offender started to cry. Why? He said, "This is the first place where I have worked with you people"—there was a YMCA team working there—"and the first where I have begun to feel a sense of personality and a sense of worth, or begun to form any relationships. I am scared of what awaits me when I go out—scared". We have to work at relationships, and the family is critical in this. We have to make sure that we have a penal system soon—pray God, soon—that is designed to meet the real needs of people and help them to put their lives together again.

*6.20 pm*

**Baroness Benjamin (LD):** My Lords, I am grateful for the opportunity to speak in this debate, as I have huge admiration for the work of the noble Lord, Lord Farmer, and the report on the importance of family ties in prison reform that he and the excellent organisation Clinks produced. Congratulations.

This is an issue I feel very passionately about. In 2013, I asked an Oral Question on the subject. In 2014, I also supported an amendment to the Criminal Justice and Courts Bill raising the concerns of Barnardo's, the children's charity, on the importance of family ties in prison. I declare an interest as a vice-president of Barnardo's, which runs a number of services for children affected by parental imprisonment. I have made a number of visits to prisons, most recently just last week to Rye Hill prison in Rugby, where I have heard from prisoners themselves about the value that maintaining contact with their family and children brings, not just for their own rehabilitation and reform but for the well-being and future prospects of their children, too.

Barnardo's reports that children with a parent in prison feel isolated and ashamed and suffer low self-esteem, unable to talk about their situation because they are scared of being bullied and judged. Their needs are often forgotten. An estimated 200,000 children are living with a parent in prison, although this is just an estimate because these figures are not officially recorded—as I highlighted in this Chamber back in 2013. There is no policy or legislation to support these children within mainstream services. They are not recognised as a distinct group by local safeguarding children boards.

Barnardo's has been campaigning to raise awareness of the distinct needs of this group of children for many years, so I very much welcome the noble Lord's review. I was particularly pleased to see his overarching recommendation that family has to be, as he says, the "golden thread" running through the reforms across the prison estate. He was quite right to highlight a very basic principle that relationships are fundamentally important if people are to change. But more than that, limiting the impact on the child is vital if we are to break and tackle intergenerational cycles of offending, where 65% of boys with a father in prison go on to offend.

It is essential to help prisoners keep important family ties, so the classification of children's visits as a privilege within the incentives and earned privileges,

or IEP, scheme used in male prisons is an issue that comes up time and again and needs to be solved. The IEP scheme allocates the duration, frequency and quality of visits according to the behaviour of the offender. Family visit days are restricted to "enhanced" prisoners and demand a high level of performance, including demonstrating outstanding behaviour and seeking to obtain qualifications. This has a negative impact on the visits that can be made by their children. Consequently, some families have never experienced a family day, which allows for longer quality time between children and their fathers. In 2015, Barnardo's published a report called *Locked Out—Children's Experiences of Visiting a Parent in Prison,* which highlighted this very issue. Since then, the Government have pledged to review the IEP scheme, but there has not been any sign of such a review. When will the Government carry out this promised, long-awaited and important review?

I appreciate that discussing the issue of the treatment of those who have broken the law and are being punished for their crimes can divide opinion. What we must not lose sight of, however, is that those offenders often leave behind an innocent child or children who are also being punished. If we are truly to break the intergenerational cycle of offending that the noble Lord, Lord Farmer, so robustly outlined in his report, then we must look through the eyes of the child and remind ourselves that childhood lasts a lifetime. We must do all we can to ensure that children receive the services and support that they need, and that we break down those barriers that prevent a child from having the relationship with their father that they might want and need. I therefore look forward to hearing the Minister's response on this important report.

*6.26 pm*

**Baroness Masham of Ilton (CB):** My Lords, I thank the noble Lord, Lord Farmer, for his report and for securing this debate. During 2016, almost 200,000 children had a parent in prison, as has just been said. They are too often the forgotten victims, facing higher risks of mental illness, poverty and crime.

The Prison Advice and Care Trust is one of a number of charities that support the families of those in prison. PACT's helpline handles more than 7,000 cases a year where families have serious concerns about their loved ones in prison. The noble Lord, Lord Farmer, identified that the voluntary sector has taken the lead in improving the links between prisoners and their families. He also indicated the benefits of closer collaboration between prison staff and voluntary organisations. Will the Government implement a systematic and quality-assured communications gateway to enable prisons to work with families to reduce self-harm and suicide?

Release on temporary licence—ROTL—is a pivotal part of the resettlement and rehabilitation process. Years ago, a young man called Mog attempted suicide because he was not released to attend his grandfather's funeral. His grandfather had looked after him for most of his life. Can this be given more compassionate consideration? What steps are the Government taking concerning support for prisoners without social and family contacts outside of prison?

One of the young people on my list at the young offender institution, whom I saw before discharge, was classified as homeless. I asked him the reason. He told me that his mother had died and his sister was in care because his father had abused her. What is more, he said, his father was now abusing his two young brothers, aged 10 and 12. These vulnerable people must be helped. This young person was leaving a YOI with a medical condition. I alerted the probation officer to this situation, but I have always wondered what the outcome was.

Keeping contact with family and friends when in prison can be vital, but travelling long distances to prison, such as the vast new prison in north Wales, can be very expensive for family members. Can family or friends on low incomes get help with travelling expenses?

Many people in prison do not have life skills, but these are being taught at the young offender institution at Brinsford. This shows progress.

We have a growing elderly population in prison. Many are ill and have dementia; prisons do not have the facilities needed to cope. Is it not time that we had some secure nursing homes to solve this growing problem? Many prisoners would volunteer to look after those people. I hope that the Government will take that seriously.

*6.30 pm*

**Lord Shinkwin (Con):** My Lords, I, too, welcome my noble friend's review. For me its strength lies not just in its compassion, thoroughness and involvement of so many stakeholders. It lies also in its hard-headed logic; it is grounded in reality and in what we know works. Put simply, as we have already heard, in helping to reduce reoffending, family relationships work.

It surely follows that, if we want to reduce reoffending, and thereby reduce the number of victims of crime, the size of the prison population, the amount of overcrowding and therefore the pressure on our prisons and on all who work in them, it makes sense to facilitate sustaining family relationships. That is why I also welcome the review's practical focus in chapter 7 on building the right estate for reform. That means, among other things, good disability access being factored in from the outset, in consultation with disabled people's organisations such as Disability Rights UK.

Disability access was a central theme of what I consider one of the jewels in the Conservative crown: the landmark Disability Discrimination Act 1995. Yet I worry that sometimes my party risks giving the impression that we do not always take sufficient pride in the DDA—too much of which, as the 2016 report of the ad hoc Select Committee on the Equality Act 2010 highlighted, remains unimplemented. So to disprove what some disabled people perceive as a lack of enthusiasm on the part of the Government, I make a plea that they announce soon how they plan to make good on their welcome manifesto commitment to review disability access and, where necessary, take action—and, moreover, that they use the Farmer review, the planned opening of new-build prisons and the redevelopment of existing sites to put disability access at the heart of improving the prison estate.

As the population ages and disability becomes more of an issue for prisoners and visitors alike, we need to plan now for accommodating the demands which

[LORD SHINKWIN]
demographics will inevitably place on the prison system. Indeed, the urgent need to do so is underlined by a recent MoJ report on the prison population in England and Wales, which projects that the total number of over 50 year-olds being held in prisons will rise from 85,863 in June this year to 87,400 in June 2021.

In conclusion, we need to seize this opportunity to get it right on disability access—whether for prisoners or visitors—if we want to facilitate sustaining the family relationships that are so crucial to reducing reoffending. My noble friend's review charts a compassionate and logical way forward. I urge the Minister to signal today that the Government will implement its recommendations.

*6.35 pm*

**Baroness Warwick of Undercliffe (Lab):** My Lords, the report from the noble Lord, Lord Farmer, is thoughtful, realistic, unsentimental and hard-hitting. It references many other reports going back to the early 1990s which all highlight the link between good family relationships and prison safety and reform. Yet many of their recommendations seem largely to have been ignored.

The noble Lord, Lord Farmer, found that the prescriptions regarding prisoners' families are,

"far from ubiquitous across the prison estate",

and that the gap in provision between vision and execution at the front line, identified in 2014 by the National Offender Management Service and the Department for Business, Innovation and Skills, is still "very much in place". Yet the Ministry of Justice's own research shows that visits from someone with a significant relationship, including family members, bring structure and stability to prisoners' lives, mean less unrest and reduce the odds of reoffending by 39%. A quarter of the prison population reoffends within one year, adding cost to the public purse and extra pressure on staff. Surely family work should be seen as a vital component of prison reform.

The noble Lord, Lord Farmer, highlights the change in mindset that will be required of many governors, senior staff and prison officers so that, at every level, accountabilities and responsibilities are understood and acted on. The Secretary of State for Justice needs to be held directly accountable for ensuring that family ties are treated properly and consistently across the estate and that governors should have clear accountability for improving prisoners' family relationships and other family-related standards. He calls this the golden thread which should run through all a prison does.

For some prisoners, though—possibly quite a lot—family relationships are what got them into prison in the first place. That was certainly true of the young prisoners I encountered in the National Grid young offender programme. For these people, relationships other than the family are the golden thread. Sometimes these are built up in prison, but it is very difficult for the thread not to break on release. The prison and probation systems could certainly develop better ways to spin golden threads for all. Many families do it anyway. The real challenge is with all the others.

I looked at data for one prison, Thameside, where close to half the men have no family at all. There is a pressing need for decent and secure hostel accommodation on release, but this requires interdepartmental and interagency collaboration and co-operation—one of the most difficult things to deliver.

The report also recognises the importance of family and community support away from the prison estate. When 63% of prisoners' sons go on to offend, this surely reinforces the importance of working with families outside the prison gates and in their communities. In her reply, will the Minister say something about the way in which planned reforms will be integrated with the work of probation, Jobcentre Plus, local councils, healthcare providers, charities and faith groups?

There is an important caveat in the report. It emphasises the

"deep and pervasive problems endemic across the prison estate",

including understaffing, overcrowding, violence and illicit drugs, as well as the prevalence of mental health problems. The noble Lord, Lord Farmer, warns that, unless these are addressed, rehabilitation is not a realistic aim; his proposed reforms will not be possible without the additional money and staff promised to the prison system. The gap is profound. Can the Minister, in her reply, acknowledge that gap and say how it is being dealt with?

Finally, we should not underestimate the suspicion of many serious organisations that the report will be ignored. INQUEST and the Big Lottery-funded Beyond Youth Custody programme both say that, while there have recently been many positive statements relating to prison reform, it remains unclear how such reforms and aspirations will be achieved. We need to be reassured by the Minister that, as the noble Lord, Lord Farmer, himself says, we will not see history repeating itself,

"and another yawning gap opening up between a vision and its execution".

*6.39 pm*

**Lord Bird (CB):** My Lords, I am very pleased to be here for the discussion on the work of the noble Lord, Lord Farmer. I find it really interesting because, in all the discussions that I have heard over the years around how to keep people out of prison, a very small amount of effort has gone into thinking about the family, although there have always been things around education, literacy and getting people a job. We must thank the noble Lord, Lord Farmer, for creating an innovation; he is adding another leg to the stool, as he describes it.

I have a problem because, when we look at the family, we often see the reasons why somebody ends up committing a crime. In a sense, the family may not have always been with the person who ends up being the criminal. We could say that the wrongdoer is, in some strange way, demonstrating the failure of the family. They go ahead, because the family does not create and hold the elements that make somebody not want to wrong-do. I am very interested in taking the argument around family and asking what can we do to make the family work better, so that its members—its fathers, its sons—do not end up going ahead of the broken family and becoming an expression of it. I am glad that we are starting the debate around the family, because it does not really matter what form the family takes. It does not matter if it is mum and dad in the old way or whether it is made up in a new way. What is

important is that we give the young of this world all the encouragement and opportunity which means that they then do not break down, kick over the traces and go on to commit crimes. I am interested in how we as a society can support families not to break down, or not to have that breakdown being expressed in somebody ending up in prison—whether it is a son or daughter, or a father himself.

We also have to look at the fact that, since the time that I was using the prison system—obviously for good use, because I am here—the prison population has gone through the roof. Our officers do not have enough time. We have begun to warehouse people. If people are warehoused, it does not matter to some extent what kind of family they have, because the warehousing will rot their souls and ambitions and destroy them. We have to stop treating our prisons as warehouses and start using them as universities, as they tried to do with me when I was a young man. God bless Her Majesty's Prison Service; I am really glad that I went through that experience.

We then have another big issue—sorry, I was not plugging anything—which is drugs. The fact that you can get any drug in most of our prisons more easily than if you walked around Soho is a terrible thing which will undo all the work around the family. We need to find a way to support the family in the first instance and to address the really philistine way in which we warehouse our children and, instead of turning them to prospective university-type learning and all the skills that will enable them to move on, we just hold fast. Treading water is not good for the human soul. I am really glad the noble Lord, Lord Farmer, has introduced us to the other leg of that beautiful stool.

*6.44 pm*

**Baroness Bloomfield of Hinton Waldrist (Con):** My Lords, I think we are all indebted to my noble friend Lord Farmer for his outstanding contribution to prisons policy with the publication of this landmark review. He displays both a deep commitment to, and consistent support of, evidence-based research into the importance of the family unit. I welcome the opportunity to contribute to his debate.

In 1991 the noble and learned Lord, Lord Woolf, identified the link between the disruption of family ties and the violence, self-harm and mental health issues that might result. It is dispiriting to see the same link in evidence over parts of the prison estate today, despite recognition across the sector of the importance of familial contact and support.

In my magistrates training some 25 years ago, we were taught that the three purposes of a custodial sentence were to protect the public, to punish the offender and to provide rehabilitation. Rehabilitation was generally viewed through the prism of education and counselling that could address a broad range of behavioural issues such as anger management. In subsequent tours of prisons in both Oxfordshire and London, I do not remember anyone actually stressing the importance of facilitating constructive contact between the offender and his family—not even in the most basic terms of compliance with Article 8 of the European Convention on Human Rights. So I welcome the report's recommendation that maintaining and developing family relationships should be explicitly stated as part of the purpose of prison. The punishment element of a custodial sentence is the deprivation of liberty, and not necessarily everything else that leads from this disposal. Traditionally, families have inevitably suffered great collateral damage.

It is very much in society's interest to reduce the rate of recidivism by whatever means it can within the prison context. Few can be unaware of the very challenging circumstances prison staff confront daily: understaffing, underfunding and overcrowding, plus the inexorable rise of drug abuse and its effect on behaviour. I wholeheartedly welcome the recent Government announcement of increased funding to recruit an additional 2,500 prison officers and a new emphasis on training. The Farmer review concludes that strengthening ties between prisoners and key family members could save society up to £15 billion by reducing the rate of reoffending in up to 39% of the 82,000 men currently in prison. Additionally, offenders with more stable family relationships are likely to be more stable prisoners, with a greater commitment to preserving a supportive family environment on their release.

This research, and that of Marie Hutton in the *Probation Journal* last year, both underline the contrasting approaches of different prisons to visits and the disparity in their offerings. It also highlights the potential rewards of initiating a cultural shift by doing more than just paying lip service to encouraging contact between prisoners and their families. This can be achieved both by developing proactive strategies and providing a secure but welcoming environment in which meaningful contact is encouraged. Importantly, the review also suggests that it is imperative that the whole visiting process is disconnected from the incentives and earned privileges scheme.

I was heartened to read of the excellent work at HMP Doncaster. It shows what can be achieved when a prison governor and their team are motivated by a true belief in the importance of family contact. It is also encouraging to read how the design of HMP Berwyn, and indeed all new-builds, are to be subject to the Government's new family test. The review offers many examples of best practice: external visitor centres, free bus links—as provided by the Parc prison in Bridgend—and the possibility of introducing virtual video visiting, connecting offenders with their homes visually. Family days, homework initiatives and the ability of a father to sit side-by-side with his child are all examples of best practice which could be shared widely across the prison estate. The concept of an extrovert prison—one that looks outwards to the wider community—is welcome.

I spent five years as a volunteer teaching literacy skills in what was then Huntercombe Young Offenders Institution, which was populated largely by teenagers from the London area and yet was located eight miles or so west of Henley. Transport links were both tortuous and expensive for offenders' families. I remember being shown its rather sad communal visits hall, with less atmosphere than a motorway service station and rows of tired, uncomfortable—if not broken—plastic chairs and desks. It was hardly conducive to any meaningful interaction with parents, girlfriends or indeed babies.

[Baroness Bloomfield of Hinton Waldrist]

I believe that we have moved on from here. Prison rules have been redrafted, but there remains much more work to be done in terms of embedding these principles into the corporate psyche. Of course, this is not the answer to everything. As Lord Farmer comments at the outset, prisoners' families alone cannot,

"alchemise a disposition to commit crime into one that is law abiding".

However, it remains true that a prison sentence is, sadly, a whole-family experience. Any integration of this report's thoughtful, practical, evidence-based recommendations into policy may ensure that for many, and at least for the 39%, it is their only one.

*6.50 pm*

**Lord Morrow (DUP):** My Lords, I too congratulate the noble Lord, Lord Farmer, on securing this debate and on the review. I am heartened to see how frequently good practice in prisons in Northern Ireland is mentioned. I will largely confine my remarks to this area, as I am not one of the prison reformers or experts to whom the noble Lord referred. However, I am unreservedly supportive of policies and effective programmes to strengthen families and build good relationships. Strong family units build a strong and caring society.

First, however, I want to mention victims. Victims in Northern Ireland, especially of crimes committed during the Troubles, can feel at the bottom of the list of those deserving sympathy, given the imperative for reconciliation. Many have lost loved ones under the most harrowing of circumstances, others have been horribly maimed and left unable to work, while swathes of people in towns such as Omagh and Enniskillen, to name but two—there are too many to mention in this debate—have been left traumatised by bombings and other terrorist acts, and we are coping, at a population level, with the legacy of mental ill health.

I agree with the noble Lord, Lord Farmer, that, looking ahead, sparing future victims must always be at the forefront of our minds. Reoffending creates more victims, including in the families who are repeatedly left stranded when a man goes in and out of prison. Therefore, although the focus of the Farmer review is on how making the most of prisoners' family ties can help to prevent, first, reoffending and, secondly, intergenerational crime, the third priority must be the well-being of the children of prisoners. They look to the man who has been lost to them for financial support and look up to him as a role model, however flawed he may be. Having time alone with father, where appropriate, can be incredibly precious. The Northern Ireland Prison Service provides child-centred visits, where a parent or relative brings the child to prison and leaves them with their imprisoned parent for a period.

Northern Ireland is also leading the way in virtual video visiting, which is gradually being made available, particularly in Magilligan prison. The aim is not to phase out face-to-face visits, but it enables prisoners to see their family members at home. It acts as a motivator and a reminder of normality—of how their lives could be very different if they do not take their families for granted.

The emphasis on getting men to focus on others is absolutely crucial, and charities can do this masterfully. Barnardo's Families Matter programme at HMP Maghaberry runs in a separate residential unit at the prison. Fathers open up about their families in ways that would probably invite ridicule in the rest of the prison and receive parenting, education and cooking workshops which focus on families. Using separate accommodation develops a culture of peer support and builds more trusting relationships between men. Hearing about other prisoners' parenting experiences is more motivating and harder to dismiss than being lectured by staff, and they can put theory into practice when their families unite or visit. Prison officers' interactions with participants in this setting enables them to identify and defuse risk early, so the programme helps keep order in the prison. All this depends, however, on there being enough staff to enable men to take part and on officers having the training in relational skills that the Farmer review recommends.

Can the Minister confirm whether Her Majesty's Prison and Probation Service has officially shared this document with counterparts in the Northern Ireland Prison Service? If she is any doubt about that, I can make sure that a copy is placed in the hands of the director-general, but it would pack more of a punch if it came with a letter from Michael Spurr.

*6.54 pm*

**Lord Thomas of Gresford (LD):** My Lords, I thank the noble Lord, Lord Farmer, for this splendid report. It is very much in the tradition of the 1990s seminal report by the noble and learned Lord, Lord Woolf, as the noble Lord, Lord Ramsbotham, pointed out. I admire his emphasis on strong and stable family relationships—the third leg, as he puts it—that the noble Lord, Lord Bird, commented upon.

Like the noble Lord, Lord Judd, I have never been in favour of large prisons. There is an element of warehousing about them, and I remember opposing them when Labour was in power and wanted to introduce them. I remember the Shrewsbury prison from my professional days. It was a splendid, small prison dealing with people from north Wales and constantly got to the top of the "Good Prison Food Guide"—echoes perhaps of the café at Norwich to which the noble Lord, Lord Farmer, referred.

Now we have HMP Berwyn, which is less than a mile from where I live in Gresford and so I have a great deal of interest in it. HMP Berwyn flies a Welsh flag; it has bilingual notices; it offers courses in Welsh; but it is not a community prison. Of the 500 inmates who have so far have entered that prison, only 10%—about 50—are from north Wales. That compares with 228 north Wales prisoners who are housed at HMP Altcourse in Fazakerley, Liverpool. Despite the good intentions of Mr Russ Trent, who is the excellent governor of the new prison, it is not helpful when 69 people from the prison in Wrexham are housed at Altcourse and only seven are housed at Wrexham. Whoever is putting these prisoners in their places has got the emphasis completely wrong.

The HMP Berwyn visiting information says:

"At Berwyn we understand that it is constructive for men in custody and their family and friends to have the opportunity to retain close relationships and family ties whilst in our custody".

It refers to the,

"relaxed layout to the visits hall with comfy seating and a soft play area for children".

I would be more impressed if that did not repeat, word for word, the wording of the visitor information for HMP Altcourse, which is a G4S prison. And the map must have been added to the website by somebody with a sense of humour, because it is placed next to a hamlet called "Ystrad Ffin", which means "End of the road". It shows it as being on the top of a mountain, near Llanwrtyd Wells and Dolaucothi Gold Mines—some 85 miles away from the prison. Whoever has put that plan in should revise it very quickly.

But the prison in Wrexham is two and a half miles from the station. It is on an industrial estate, which I know well because I used to dig up the railway sleepers there as an early venture into jobs—learning about tea breaks and things like that. It is catering to people from a long way away. I agree with the noble Baroness, Lady Masham of Ilton, that it would be sensible to provide some form of support for families who are trying to visit people there—non-transferable, once-a-month rail vouchers perhaps. People might ask about the cost. If 43% of prisoners reoffend—I think the noble Lord, Lord Farmer, said at a cost of some £15 billion—that makes the cost of non-transferable rail vouchers for people of more than 30 miles away to come and visit their family well worth the money.

The best rehabilitation is undoubtedly the family. It is to the family that people return, and it is that contact that is kept with parents, spouses, children, and relatives which is most likely to prevent reoffending in the future.

*6.59 pm*

**Lord Stevenson of Balmacara (Lab):** My Lords, like other noble Lords I congratulate the noble Lord, Lord Farmer, on securing his debate and on his introduction of this golden thread: relationships are important if people are to change. That was a strong theme that ran through the rest of the debate and informs the report, which I enjoyed reading. This is been a good debate, with some good contributions; there is not time to go through all of them. I should explain that I am here as a substitute for a sick colleague—my noble friend Lord Beecham has sciatica and cannot move—and so I have come to this with an open mind, because I have not studied this area for a long time. Therefore I found the reading of the report, thinking harder about it and reading more widely round it a useful exercise and a great chance to get away from some of the other more pressing issues that have been occupying me for the last few weeks. When I read all this stuff I did not have the context or the information that was available to others who might have responded. However, I want to make two points that I thought might be helpful.

My interest in prisons came from when I worked in a think tank, when we looked at the concept of restorative justice. I was impressed by that as a way of trying to bring something new into the criminal justice system and give both prisoners and those who have to supervise them something that would work with them and rehabilitate them better. I mention that because the restorative justice approach was based on the idea that there was a missing ingredient in the criminal justice system as it is practised in the United Kingdom, in that the victim has no place. The state steps in and takes over the victim's interest in the crime that has been committed against them and, in so doing, removes the victim from that. The analysis that was used said that if you brought the victim back in some way, you added a new dimension to the whole process. I can give examples of that to any noble Lords who are interested, because it is an effective arrangement. It is important that this has a much wider application—it is now used in schools and other places—to try to engage those who commit crimes with those who have been affected by them.

The points made by the noble Lord, Lord Farmer, are redolent of that. In his analysis, what is missing from the process that we have in criminal justice is the family. If this is true, and if it has any relationship to what was found in restorative justice, that is a powerful ingredient that we need to bring back into the system. We somehow need to find a way to make sure that there is a process that will allow it to feed back in the way it can to reduce reoffending, change behaviour and reduce crime.

We have a problem here. The prisons are in a state of complete crisis. They are chronically overcrowded, understaffed and violent, and the learning and skills work done by 65% of prisons and young offender institutions is rated by Ofsted as unacceptably low. At the end of August 2017, 84 of the 116 prisons were overcrowded, and nearly a quarter of the total prison population is held in overcrowded conditions. As we have heard, deaths have increased, and self-inflicted deaths are up by 64%, while self-harm has increased. There were supposed to be an additional 2,500 new prison officers across the prison estate by the end of 2018. However, the latest figures show that there has been an increase of only 800 additional staff, and we are not seeing the rest. Indeed, there have been reductions in some of the most violent prisons. This review has highlighted the damage that understaffing, overcrowding and violence within prisons does to the ability of those employed in prisons to build relationships with the men—it is mainly men—in their care.

There is a problem here, which needs tackling urgently. The Government published a White Paper about a year ago and accepted that a lot had to be done. There was also a Prisons and Courts Bill around just before the last election, but that got scrapped and was not mentioned in the Queen's Speech. What will the Government do about this?

*7.03 pm*

**Baroness Vere of Norbiton (Con):** My Lords, I, too, congratulate my noble friend Lord Farmer on securing this debate and the contributions made by noble Lords to this important subject. I also pass on best wishes to the ailing noble Lord, Lord Beecham. I have not a hope of covering all the wide-ranging issues raised today in the time available, and I want to focus on my noble friend's review. However, I will of course write if I am not able to respond.

The debate has demonstrated powerfully why we need to do much more to strengthen prisoners' ties with family and significant others—not just because it

[Baroness Vere of Norbiton]
helps prisoners move away from crime but because it helps families to maintain relationships with their loved ones. My noble friend's report also reminds us of the need to tackle intergenerational crime, summed up by the study mentioned by numerous noble Lords that found that 63% of prisoners' sons went on to offend themselves. That is astonishing.

I start by thanking my noble friend once again for his full and informative report, firmly rooted in evidence and best practice, which challenges us to make families the golden thread running through our support for prisoners. Although the review focuses on male prisoners, we recognise that the recommendations may be equally relevant to women, as raised by the noble Baroness, Lady Healy, and, of course, to young people.

The Government are committed to taking forward the review's recommendations. Important progress is being made and I will update noble Lords today. As part of our prison reform strategy, we are empowering prison governors. They are able to take the decisions that are most appropriate to their prisons. This means that prison governors now have control over their family service budget and the flexibility to spend their resources to best support prisoners to keep and develop important family ties.

Governors took part recently in a procurement exercise to select a group of family service providers and the contracts with these providers began at the start of this month. The contracts cover a wide range of services, including services involving children, mentioned by the noble Baroness, Lady Benjamin, and the noble Lord, Lord Morrow. These services include family centres, play areas for children, schemes to promote ties, such as Storybook Dads or Storybook Mums, and family days, also known as extended visits, on which families can spend more time together.

The noble Baroness, Lady Benjamin, mentioned IEP and families and I am very happy to confirm that we are reforming the current IEP framework to give governors greater discretion to encourage all prisoners, whether enhanced or standard, to engage with their families and significant others. I would welcome the chance to talk to the noble Baroness further about this because it is a very important issue.

Alongside this, the Government will pilot new family and significant relationship performance measures. Analysis of these will provide crucial information about the most effective ways to deliver more consistent and effective contact with families. To encourage best practice, this information will be shared across the entire prison estate.

Alongside holding governors to account, it is also right that Ministers are held to account for improvements in this area. That is why I am grateful to Her Majesty's Inspectorate of Prisons for updating the expectations it inspects prisons against each year in light of my noble friend's review. This was mentioned by the right reverend Prelate the Bishop of Rochester and the noble Baroness, Lady Bloomfield. The standards now include a number of areas relating to family and significant others that the inspectorate will consider when deciding inspection ratings.

In his report, my noble friend refers to David Lammy's recent review of the treatment and outcomes for black, Asian and minority ethnic prisoners. It is worth referencing at this point the race disparity audit recently published by the Government. We will take steps to ensure that BAME prisoners have equal access to culturally competent services that support and develop sustainable relationships with their families and significant others.

Looking ahead, we are working on a new family and significant other policy framework for governors, which will take into account a number of my noble friend's recommendations. Within this framework, each governor will develop a strategy—a local family offer, as my noble friend referred to it—for family and significant others for his or her prison. They will then engage dedicated and appropriately trained staff, perhaps akin to the FCDOs referred to by the noble Lord, Lord Ramsbotham, to work in partnership with family service organisations, such as chaplaincies and voluntary organisations, so that prisoners can develop positive relationships. Feedback from those who have used the system, such as family members, visitors and prisoners is important and will be used to shape the system in the future.

As mentioned by a number of noble Lords, some prisoners do not or should not receive visits, perhaps owing to the nature of the crime, because they do not have family or significant others or because visits from their family might encourage further criminality. Family engagement workers will work with prison staff to support the development of other positive relationships for those prisoners.

The noble Baronesses, Lady Healy and Lady Masham, mentioned release on temporary licence—an important tool in our armoury in supporting the transition back into the community. Release on temporary licence can get offenders back to work and can help build positive family ties, both of which can lead to a reduction in reoffending.

Some of the recommendations made by my noble friend Lord Farmer will take longer for us to deliver—for example, because they suggest changes to legislation or require changes to the physical estate. We are ensuring that these recommendations are picked up in our longer-term reforms, such as the estate transformation programme.

To keep track of progress in delivering the recommendations, officials from Her Majesty's Prison and Probation Service and the Ministry of Justice will meet regularly with my noble friend. This group will include the director of public sector prisons, who leads the family strategy working group. So someone is accountable—something that the noble Lord, Lord Ramsbotham, mentioned he would quite like to see. This also means that if we encounter issues that might delay or prevent implementation for whatever reason, we can discuss alternative ways forward. I am sure that my noble friend Lord Farmer will hold our feet to the fire on this.

My noble friend's review also highlights three wider issues in our prisons that we need to address. The first is staffing. We need the right number of staff with the right skills to develop consistent and constructive relationships with prisoners. We committed to recruiting

an extra 2,500 staff by the end of 2018. As the noble Lord, Lord Stevenson, mentioned, there has been a net increase of 868 new prison officers. That was up to June, and obviously there have been more since then. In June there were nearly 18,800 full-time equivalent band 3 to 5 prison officers—the highest number of officers in post since September 2013.

We must retain and recognise our more experienced staff. To do so, we are making better use of financial incentives, improving opportunities for promotion, and reviewing and strengthening learning and development opportunities for governors and officer grades. Her Majesty's Prison and Probation Service is a professional service, and we want to make sure that it offers attractive and long-term careers.

It is a question not just of the numbers of staff but of how we deploy them. As noble Lords will know, we are reforming how we manage and supervise prisoners by introducing the key worker role. Each officer will have a small caseload of around six prisoners whom they will support. Having a consistent key worker who knows a prisoner well is critical both for family engagement and for keeping prisoners safe. As my noble friend Lord Farmer reminded us, the impact on the family can sometimes be a significant burden on a prisoner, so support to maintain these relationships is sometimes essential.

The second issue, raised by my noble friends Lord Farmer and Lord Shinkwin, is prison overcrowding, which your Lordships' House discussed recently in a debate moved by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. The Government recognise the need to address this long-standing issue. That is why we are replacing old, inefficient prison places with 10,000 modern and better-designed places that support prisoner rehabilitation and can, for example, incorporate disability access—an important issue raised by my noble friend Lord Shinkwin. It is very difficult adequately and comfortably to refit a Victorian prison.

We are also continuing to support effective community sentences that both punish offenders and address their needs. For example, we are working with the Department of Health and NHS England to develop a new health and justice protocol so that courts can increase their use of treatment requirements for mental health, alcohol and drugs as part of a community sentence. This will mean that we can intervene earlier with mental health and substance misuse issues.

Thirdly, we come to the subject of drugs, mentioned by the noble Lord, Lord Bird. We are tackling the supply of drugs through joint working with the police and other law enforcement agencies. As I mentioned, we are also cutting the demand for drugs by working closely with the National Health Service to deliver drug treatment services.

I will quickly turn to some of the points that I might be able to cover in the time available. On the point about care leavers, raised by the noble Baroness, Lady Masham, Her Majesty's Prison and Probation Service has appointed a senior civil servant as the care leavers' champion for the prison service. The first national conference for care leavers attended by prison governors will take place next week.

On the issue raised by the noble Lord, Lord Morrow, about sharing the report with the Northern Ireland Prison Service, I would be absolutely delighted to arrange for my noble friend's report to be shared formally with our counterparts in the Northern Ireland Prison Service.

The noble Lord, Lord Ramsbotham, noted, with a heavy heart, that many of the recommendations were mirrored in the report by the noble and learned Lord, Lord Woolf, many years ago, and he is right. I hope that our actions at this time will go some way to rectifying the oversight of successive Governments in the past and will assure the noble Baroness, Lady Warwick, that action really is being taken.

My noble friend Lady Sharples asked whether progress has been made in recent decades. I feel that it has, not least in understanding why people commit crime, as mentioned by the noble Lord, Lord Judd. But of course there is much more that we should be doing.

To sum up, the Government welcome this review's recommendations and are acting on them as part of our commitment to modernise and reform our prisons. As my noble friend Lord Farmer put it in his report, families and significant others are, along with education and employment, the three legs of a stool that provide a stable foundation for preventing reoffending and breaking the cycle of intergenerational crime. I look forward to working with my noble friend and, I hope, with other noble Lords as we follow through on his recommendations.

*House adjourned at 7.16 pm.*

# Grand Committee

*Wednesday 11 October 2017*

## Air Travel Organisers' Licensing Bill

*Committee*

*3.45 pm*

**The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab):** Before we begin, my Lords, I should explain that the noble Lord, Lord Rosser, who is moving the first amendment, has been detained in the Chamber by the PNQ. With the Committee's permission, we will wait a few minutes for him; I suppose he might send somebody in his place, but I do not think that he will.

*3.51 pm*

**The Deputy Chairman of Committees:** Good afternoon, my Lords. I remind the Committee that, in the event of a Division in the Chamber, the Committee will adjourn for 10 minutes from the sound of the Division bells.

***Clause 1: Air travel organisers' licences***

*Amendment 1*

*Moved by* ***Lord Rosser***

**1:** Clause 1, page 1, line 8, leave out subsection (3)

**Lord Rosser (Lab):** I apologise for my late arrival; I had to be on the Front Bench for the Home Office Private Notice Question in the Chamber. I do apologise for the delay I have caused.

I will be brief in speaking to the amendments. Their purpose is to raise the issue of linked travel and flight-only arrangements in relation to ATOL protection. In respect of linked travel arrangements, the Minister said that the Bill would extend protection to consumers making these less formal holiday arrangements. Can he say which clause or subsection says this specifically, or is this a matter that the Government intend to address in regulations? If it is the latter and the Government intend to address it in regulations, why not include the extension of the protection to linked travel arrangements on the face of the Bill, as provided for in my Amendment 2? I take it that linked travel arrangements will be quite significant. Will the Minister let me know, either now or later, what proportion of what I would describe as ATOL sales the Government think linked travel arrangements will make up? Are they contemplating a new separate air travel trust for linked travel arrangements, in view of later clauses?

Turning to flight-only arrangements, one issue that surfaced during the debate on the Monarch Airlines Statement on Monday was the very low percentage of Monarch passengers covered by the existing ATOL provisions. I think the Minister said it was likely to be some 10% to 15%, and that this percentage was unlikely to have been much higher even under the provisions of the revised EU directive and the Bill. As I understand it, that is because nearly all Monarch Airlines passengers were flight-only. The Government decided, particularly because of the numbers involved, to provide flights back home for those Monarch passengers stranded abroad. This is a power the Government have but as I understand it, it is entirely up to them when and if they use it. Surely that can only create a degree of uncertainty, which is not a desirable state of affairs, certainly not for stranded airline passengers.

I put it to the Minister that the Government should consider setting out clear criteria against which they will determine whether to provide flights back home for stranded flight-only passengers whose airline has become insolvent or, alternatively, consider extending the ATOL protection scheme to flight-only passengers, who made up the vast majority left stranded by the demise of Monarch Airlines. Perhaps in that regard, the Minister could give an estimate of the cost to travel organisations of extending the ATOL protection scheme in this way.

Can the Minister expand on the paragraph in the Government's Statement on Monarch Airlines on Monday? It reads:

> "But then our efforts will turn to working through any reforms necessary to ensure that passengers do not find themselves in this position again. We need to look at all the options, not just ATOL, but also whether it is possible for airlines to be able to wind down in an orderly manner and look after their customers themselves without the need for the Government to step in. We will be putting a lot of effort into this in the weeks and months ahead".—[*Official Report*, 9/10/17; col. 46.]

What do the Government include in "look at all the options"? Can I take it that this will include flight-only passengers not ending up being stranded abroad with no automatic provision available to fly them back home at no additional cost? I beg to move.

**Baroness Randerson (LD):** I thank the noble Lord for his remarks, which have provided a useful introduction to his thinking. Clause 1(3) inserts new subsection (1E) into Section 71 the 1982 Act to clarify that the Secretary of State can make regulations to exempt any form of flight-only arrangement from ATOL. As the noble Lord, Lord Rosser, said, most of the passengers in the Monarch situation were not covered by ATOL arrangements, but it inevitably leads one to reconsider the situation and what needs to be done—we will refer to this later on. The key question is whether it is desirable for flights-only to be covered by some kind of scheme of the ATOL type. That would inevitably mean an addition to the cost of flights. In the case of low-cost airlines, it would be a significant addition to the cost of a short-haul flight. In a situation of what I think the Minister will agree is brutal price competition, I suspect, although I do not know, that the airlines would not welcome any additional costs of this nature.

On Monday, the Minister emphasised the massive scale of the repatriation that the Government, via the CAA, have undertaken, and it has been a very effective way of dealing with the problem. However, Monarch was a small airline. It might have been, as the headlines said, the biggest repatriation since D-Day, but it was a small airline that went bust. When one combines the size and complexity of that situation with the issue of linked travel arrangements and the possible development of such a concept, we have to consider what sort of compensation should be available to people throughout the market. We are in a rapidly changing market and just because airlines seem to be in robust health at the moment, it does not mean, in the uncertain future

[Baroness Randerson]
we face, that this will necessarily continue in the decades ahead. I would welcome the Minister's comments on what forms of compensation the Government are considering for those in situations where airlines go into liquidation, and by contrast what compensation should be considered for those who still stick to the old-style package holiday arrangements—if I can call them that.

*4 pm*

**The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con):** First, I thank the noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, for their co-operation on this matter. I will address the amendments first and then come on to their specific questions about Monarch and other issues.

I recognise the purpose of Amendments 1 and 2 and we have looked very closely at the legal implications of both of them. I understand and recognise the intention to ensure that ATOL protection covers flight-only bookings and linked travel arrangements. Amendment 1 would remove subsection (3) from Clause 1. I will explain why this has been included in the Bill. It is quite complicated so I will go through it. It clarifies the extent of the Secretary of State's powers to exempt businesses from holding an ATOL when they are selling flight-only tickets. It is not changing the status quo; it is merely adding clarity about exemption from the ATOL scheme.

I think there is a small amount of confusion here. Airlines selling airline tickets are already exempted from ATOL in primary legislation—the Civil Aviation Act. What we are referring to here is ATOL holders—for instance, travel agents—selling an airline ticket. The ATOL protection applies from the moment the travel agent takes your money off you—you might choose to pay for it in instalments—until the airline actually issues the ticket, when you become a customer of the airline and part of the EU 261 compensation arrangements. Your money is protected while it is with the ATOL holder—the travel agent—until it is converted into an airline ticket, when you become the responsibility of separate regulations. Under the Civil Aviation Act, airlines are exempt from ATOL provisions.

Noble Lords may be aware that Section 71(1B) of the Civil Aviation Act already provides a specific exemption for airlines selling flight-only tickets on their own aircraft. This exemption recognises that airline operators are already subject to separate licensing requirements, set out in EU law. Member states do not have discretion to impose additional requirements.

Separately, the Civil Aviation Act also includes a wide power under Section 71(1A)(b) to make further exemptions in the ATOL regulations. This power is not expressly limited in any way in the Civil Aviation Act. However, arguably the presence in the primary legislation of the specific exemption for airlines selling flight-only tickets could be misinterpreted as narrowing this wider power. That is why we have introduced Clause 1(3) to clarify the relationship between these existing exemption powers, and remove any scope for misinterpretation. We believe there is a benefit in having this clarity in law and, as I say, the presence of the airline exemption already exists in primary legislation. If the noble Lord's concern is that the Government intend to remove flight-only sales from the ATOL scheme, I can provide an assurance that the Government have no such plans. If the noble Lord's aim was to bring airlines within the ATOL scheme, this amendment would unfortunately not achieve that. We would need to amend the Civil Aviation Act in order to do that.

The noble Lord's second amendment would add linked travel arrangements and flight-only to regulation 17(1) of the ATOL regulations, which sets out the types of travel arrangements that require an ATOL certificate. I should make it clear that flight-only arrangements are already covered in regulation 17(1)(a), and we do not have any plans to change that. To accept this amendment would therefore duplicate what is already in place.

With regard to the proposal to add linked travel arrangements to regulation 17(1), once this legislation is in place we will introduce regulations to make provision for insolvency protection and the provision of information for linked travel arrangements, as required by the package travel directive. Indeed, work is already under way to draft the package travel regulations and the ATOL regulations to effect this change. The ATOL regulations will be published in draft for consultation. I am sure noble Lords would agree that it would not be appropriate to pre-empt that process by making a change now to the regulations without such consultation, as proposed by this amendment. In summary, if the noble Lord's concern is that the Government intend to remove flight-only sales from the ATOL scheme, I am happy to provide an assurance that the Government have no such plans. If the noble Lord's aim was to bring airlines within the ATOL scheme, this amendment would not achieve that aim. I hope therefore that he will withdraw Amendment 1.

I turn to the questions that the noble Lord, Lord Rosser, posed. He asked what percentage of the ATOL scheme would be taken up by linked travel arrangements. It is hard to say definitively but our estimate at the moment is a very small percentage. Part of the reason why we want to consult with industry before we introduce the regulations is that it is not entirely clear what a linked travel arrangement actually is. The directive expands the scope of the package travel arrangements, and the extension of the ATOL scheme will of course take effect for that regulation.

The noble Lord asked why linked travel arrangements are not included in the Bill and which clause deals with them. The Bill extends the ATOL powers but they are used to apply these arrangements throughout the European Economic Area. As such, all clauses apply to linked travel arrangements, and we will implement them in secondary legislation later on in the year when we have consulted with industry.

The noble Lord asked if we will be establishing a new trust for linked travel arrangements. The Government, together with the CAA, are still assessing the best way to implement linked travel arrangements that include a flight. We will consult on more detailed proposals later in the year. BEIS recently completed a consultation on the implementation of the package travel directive, and the responses to the consultation are currently being analysed. The consultation closed on 25 September.

The noble Lord asked about extending ATOL to flight-only. The ATOL scheme does not apply to airlines, as I said earlier, when they are acting as a flight-only provider, which are specifically exempted from it under primary legislation. Such airlines are subject to separate EU regulation and licensing arrangements, which include financial fitness requirements. We are not proposing to make any changes to the arrangements at this stage.

The noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, asked about Monarch. As I said in repeating the Statement yesterday, we believe the circumstances are unique. Monarch was quite a large airline—the UK's fifth largest—and the circumstances were unique in that, even if we had not agreed to the repatriation package for non-ATOL holders, there was insufficient capacity available in the market so that people who had insurance cover, credit card insurance et cetera would not have been able to purchase alternative flights to bring them home. Because of the scale of the collapse and the time of the year when this occurred, there was insufficient capacity available and therefore there was a very real danger of British citizens being stranded. In those circumstances we thought it was right to step in and fund the repatriation effort, although we are currently in negotiations with ABTA and the credit and debit card companies to try to recoup some of the costs. We hope that the particular set of circumstances that applied in the Monarch situation will never be repeated.

With the answers that I gave to the noble Lord, Lord Rosser, I would be grateful if he will agree to withdraw Amendment 1 and, on the basis that Amendment 2 duplicates what is already in place in respect of flight-only and pre-empts what we will shortly consult on with respect to the relevant regulations, I hope he will agree not to press it.

**Lord Rosser:** I am sure it will come as no surprise to the Minister to know that since we are in Grand Committee I will withdraw the amendment, but I would like to raise one or two questions in the light of the response.

I gather from what he said that nobody quite knows what linked travel arrangements are. I only mentioned them in the amendment because the Minister used the phrase at Second Reading when he said the Bill:

"will also extend the scope of protection to a new concept of linked travel arrangements".—[*Official Report*, 5/9/17; col. 1840.]

I had assumed that as the Minister referred to linked travel arrangements the Government would know what they were talking about. I now understand that people are still trying to find out what linked travel arrangements are. If I understood him correctly—and I have not heard any other argument why there should not be a reference to them in the Bill—the Government's reluctance to put them in the Bill is because they would not know exactly what they were putting in because they do not know what linked travel arrangements are and therefore what they might be committing themselves to. Perhaps the Minister could say whether that is a fair analysis or synopsis of the reply he gave on that point.

Since the Government have expressed a lack of enthusiasm for it, I also asked what would be the cost of extending compensation arrangements or ATOL protection arrangements to flight-only passengers. I did not get a response. It may be that the Government do not have a figure. Clearly, it might impose additional costs. My only comment is that when additional costs are imposed on public sector services, the argument is usually that they will have to be found from within the budget and from efficiency savings. Presumably the same argument might be used elsewhere if the Government chose to do so. I would like the Minister to clarify his response. I got a bit confused, I readily admit, not because the Minister expressed it badly but probably because my powers of taking things on board are not as great as they might be. As I understood him, he did not say that the Government could not introduce compensation arrangements in relation to flight-only passengers, whether ATOL protection or something else, because of EU regulations but that the Government do not wish to do so. Perhaps the Minister can confirm that if the Government wanted to do it, they could, but if they do not want do it as opposed to being unable to do it because of EU regulations, that makes their estimate of the cost even more significant.

The Minister has indicated a lack of enthusiasm on behalf of the Government for going down the road of protection for flight-only passengers. Where does that sit with what was said in the Monarch Airlines Statement? We were told that,

"our effort will turn to working through any reforms necessary to ensure that passengers do not find themselves in this position again. We need to look at all the options—not just ATOL".—[*Official Report*, 9/10/17; col. 46.]

Surely one of the options must be a similar kind of protection package for flight-only passengers, bearing in mind that the great bulk of Monarch passengers were in that category. Is the Minister saying, only two days after Monday's Statement, that one of the options has already been shut down?

*4.15 pm*

**Lord Callanan:** Let me try to clarify the issues. The fundamental reason we are extending the ATOL scheme to cover linked travel arrangements is that the concept of linked travel arrangements is introduced by the EU directive. We had slight difficulty in defining exactly what that is in our discussions yesterday with the noble Baroness, Lady Randerson.

Let us assume that the Rosser family are going on their annual holiday and so book airlines tickets. Within the website used to book the airline tickets, they may be offered a hotel or car hire at the same time. They might be offered those at the behest and specific recommendation of the low-cost airline or through a Google advert placed on the website but with no direct connection to the airline. In the first instance, if you follow up purchasing an airline ticket with booking a car and a hotel, and you do it within 48 hours, it might be a linked travel arrangement. In the second instance, if you respond to an advert placed on the same webpage, it may not be a linked travel arrangement.

The answer to the noble Lord's question is: we are attempting to define what a linked travel arrangement is through consultation with the industry. The concept itself was introduced in the EU directive. As someone who has taken part in many late-night trialogue sessions at the end of the process of EU legislation, I can see why sometimes the drafting of EU directives is not as good or forthright as it should be.

[Lord Callanan]

The package travel regulations extend the definition and scope of what a "package" comprises. From informal discussions that we have had so far with the package holiday companies, we think that the vast majority of products they sell would be covered under either the old or new definition of a package holiday. On their current business models, a very small percentage would potentially be linked travel arrangements. As part of the directive, the information provisions would have to make clear to a customer that if they were signing up to a linked travel arrangement, there may be a lesser standard of protection than that provided by the package holiday directive for those who have purchased a package holiday, which would be guaranteed under the ATOL scheme. I hope I am explaining it well—it is rather complicated, and the noble Lord can come back to me if he wants further clarification.

The noble Lord asked whether we are prevented by EU regulations from extending the ATOL scheme to airlines. My understanding is that we could extend it to airlines—no doubt I can write to him if I have the wrong impression—but to do that we would have to change primary legislation, because the Civil Aviation Act states that airlines are exempt.

Turning to ATOL-protected flight-only booking providers, which we are talking about in this Bill, they are concerns such as high street travel agents. As well as being able to sell package holidays, they can also sell flight-only products. Obviously, before the airline actually issues the ticket, the customer would have ATOL protection in case the travel agent or the high street provider goes bankrupt in the meantime. Once the ticket has been issued, the customer becomes subject to the separate provisions of the EU 261 compensation regulations.

With regard to the Monarch situation, we still have a few days left in which to finish the rescue operation, and I am pleased to say that so far it is going well. On the face of it there are no easy answers to this situation. Of course we could extend ATOL protection to every airline ticket that is sold in the UK, but no doubt the noble Lord will have received the same representations as I have from airlines and others complaining about the impact of air passenger duty and how it makes the UK travel and airline market uncompetitive in many respects, although there are other issues around what might happen in Scotland or Northern Ireland. If we were to extend the insurance scheme to every airline, in effect that would just increase air passenger duty because we would be adding an amount to every airline ticket. That would apply to every airline operating from the UK or anyone transiting through this country, including Emirates, American Airlines and every other operator that travels through the UK. Many are in very robust financial health and people would already have an element of protection through the EU 261 directive.

There are no easy answers to the Monarch situation. The other area that we could look at, but which is outside the scope of the ATOL Bill before us today, would be the insolvency regulations. We can ask whether it is possible to arrange the orderly wind-down of an airline so that it can continue to operate. Again, however, that has some potential problems, not the least of which is creditor action. As soon as an aircraft is abroad in a foreign airport, if creditors know that an airline is in financial difficulties and they want payment for services upfront, they typically impound airplanes and refuse to allow them to return to their home country. It is a potential avenue that we could look at and we are not ruling anything out. We will examine all the possible ways of protecting the taxpayer in the future, but there are no obvious solutions to prevent this happening. However, I should say that we are not aware of any other airlines that might cause us anxiety at the moment.

**Lord Rosser:** I am not surprised that the Minister has not been able to give us an estimate of what the cost would be of extending the ATOL provision to all flights, obviously including the Monarch situation. I assume from that that the Government do not have a figure. I take it from what the Minister has said that the reference in the Statement to all options being looked at still stands, including the options in one form or another that we have been discussing in this debate. On the basis that I have not misunderstood the Minister and that all options are genuinely being looked at, I beg leave to withdraw the amendment.

**Lord Callanan:** Perhaps I may provide some clarification. EU law actually prevents us from adding additional licensing provisions that go beyond EU law in the case of the licensing provisions of airlines.

*Amendment 1 withdrawn.*

*Amendment 2 not moved.*

*Clause 1 agreed.*

*Amendment 3*

*Moved by* ***Baroness Randerson***

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

"Potential impact of leaving the European Union on consumer protection under the ATOL scheme

(1) The Secretary of State must carry out an assessment of the potential impact that leaving the European Union will have on consumer protection in the United Kingdom under the Air Travel Organisers' Licence scheme.

(2) The Secretary of State must lay a report of the assessment before Parliament within the period of 12 months beginning with the day on which this Act is passed."

**Baroness Randerson:** My Lords, Amendment 3 would insert a new clause to deal with the potential impact of leaving the EU on consumer protection under the ATOL scheme. It asks the Secretary of State to carry out an assessment and to lay a report before Parliament within 12 months of this Act passing. The key question is whether consumer rights and protection in this respect will be reduced on leaving the EU. The Minister made much of the fact that the UK was ahead of the game many years ago when it set up the ATOL scheme. He said that in some respects the rest of the EU was catching up with us with the 2015 EU package travel directive.

The Bill is designed to bring us in line with the rest of the EU—an organisation we are about to leave. It is obviously of considerable importance that we understand the potential impact of the various stages of the Brexit process. As I understand it, the Government are no longer suggesting that we can get everything sorted by

March 2019, so I assume there will be a transition period. But we will not be members of the EU at that stage, according to statements made by several Ministers. Instead, we will be mirroring EU membership to a greater or lesser extent. Since so much of the legislative structure surrounding aviation and the relevant international agreements are not specifically part of EU membership—but we are nevertheless signed up as members of the EU—there seems to be a particular danger that the aviation sector will be at the sharp edge of decision-making. Certainly, the sector feels that it is important that it is at the leading edge of decision-making. There is uncertainty associated with that, of course.

If the worst happens—not the scenario I have just outlined but the worst—and we crash out of the EU without a deal, what will happen to the additional rights and safeguards conferred by the Bill? I expect that the Minister will say that they will remain as they will be enshrined in UK law. However, if we crash out without a deal, all bets are off. We will no longer be obliged to mirror EU consumer protections. Some Ministers have spoken in terms which suggest that the more bargain-basement approach to international trade might be the preferred option.

As marketing methods and IT develop, this is an increasingly complex area. Today's discussion has already reflected that. The Monarch case illustrates that complexity, with only about 14% of people covered by ATOL. People can sit next to each other on the same plane and stay at the same hotel but be entitled to different compensation or no compensation, according to their method of payment. Did they pay for it as a package holiday—a single entity? Did they pay for it as separate parts? Did they pay by credit card or PayPal, in which case they would get protection? In some ways, I gather, this can be enhanced protection. If they paid by debit card, they would not get that protection—they would not get compensation. It is worth noting that there is often a superficial financial incentive to pay by debit card because many websites now charge for paying by credit card.

*4.30 pm*

I welcome the extension of the concept of protection to linked travel arrangements, whatever they may be, but I want to emphasise the Minister's earlier point in my own way. When an advert for a hotel pops up on your screen after you have booked your flight, how are you to know whether that is a linked travel arrangement or simply a Google advert? I have spoken to people about this issue and they have given me examples of where they thought they were booking on one website but ended up on a different website, because it is so easy to slip from one facet to another.

It is essential that the Government ensure that the industry has to make it very clear—not just in the small print but at the point of decision-making—exactly what your rights are and what you are buying, according to the method of payment. I appreciate that the question of debit and credit cards is covered in other legislation, but do not believe that that would stop the industry making this clear. It should not stop the Government using this opportunity to make the consumer's rights clear to the public, in every case. It is also important that the public are informed of whether or not it is a linked travel arrangement. I suggest to the Minister we need a consumer campaign on this—we need consumer information.

There is little that is more precious to us than our family holiday. It is a very significant chunk of our annual spending. We look forward to it and we anticipate the relaxation, and after it is over we have—we hope—happy memories, but certainly long-standing memories of time together with friends and family. Holidays are of huge importance to consumers and it is important that they are absolutely clear what their rights and protections are in this complex area. Therefore, it is important also that they know how their rights and protections will be affected by the final scenarios for exiting the EU.

The aviation and package tourism industry is a massive part of our economy. We believe it is important that the Government do not just consider the impact of Brexit on that industry—I am sure the Minister considers it every day—but that consumers are made aware of what the Government believe that impact will be. It is important that the Government produce a report to be discussed by this Parliament.

**Lord Rosser:** I will be brief. It seems that the terms of this amendment are entirely reasonable, since people will surely want to know whether changes are going to be made to the protection arrangements, if and when we leave the European Union. There is a need for people to be clear what the impact is. It may be that there is no impact and so that needs to be clear, but people certainly need to know what the impact is, whether it is negative or not adverse at all. That is what this amendment is seeking. I do not know whether the Minister is going to accept it or not. If he is not, I shall listen with interest to his reasons for saying he cannot.

**Lord Rogan (UUP):** My Lords, this sensible amendment should be added and I fully support it.

**Lord Callanan:** I start by saying that I fully endorse the purpose of the proposed new clause. In the coming years we will be embarking on major changes in our relationship with Europe, and it is very difficult to predict where the negotiations will end up. Therefore, it is important to begin by offering assurances that the Government would want UK consumers to continue to enjoy strong protections and an effective consumer regime, whether inside or outside the EU. I am sure that is something that all parts of the Committee can agree on. The UK has always been a leader when it comes to providing protection for holidaymakers. After all, as the noble Baroness said, we set up the ATOL scheme in UK legislation several years before the original package travel directive was agreed in Europe. That is a significant point. It means that the ATOL legislation is not dependent on the package travel directive. This Bill will harmonise ATOL with the package travel directive in the immediate term. However, the ATOL legislation and the protection will still exist and remain in place as we leave the EU.

Notwithstanding this, I fully understand why this amendment has been proposed in order that we consider the ongoing impact on consumer protection as we

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leave the European Union. However, this is catered for in the legal and policy framework already in place. There is already a legal duty on the Government to review under the Small Business, Enterprise and Employment Act 2015. This places an obligation on us to undertake a post-implementation review within five years of passing legislation.

Furthermore, we already have an independent review body in place to provide an ongoing review of the financial protection available for air travellers. The Air Travel Insolvency Protection Advisory Committee—or ATIPAC, the snappy acronym by which it is more commonly known—was set up by the Labour Government in 2000. Its purpose is to provide advice to the Civil Aviation Authority, the Air Travel Trust and the Secretary of State for Transport on policies that should be pursued to protect consumers. The committee consists of representatives of industry, consumers, the CAA and Trading Standards. This means that it is very well placed to provide an informed and independent view on policies. The committee already submits a substantial report to the Secretary of State every year, which is also published on the CAA and ATIPAC websites. This report should draw to the Secretary of State's attention any concerns on which, in ATIPAC's view, further action is necessary to maintain strong consumer protection. This includes advice on changes in the market and, where appropriate, their potential impact on consumers and the financial protection arrangements.

I am sure that the committee is already minded to keep a close eye on consumer protection, both before and after we leave the EU. In fact, my colleague the Minister of State for Transport in the other place, the right honourable John Hayes MP, has already asked the committee's chair, John Cox, to consider this precise point in the ATIPAC 2017-18 annual report. These reports will be submitted to the Secretary of State within four months of the end of each financial year and will, as I said, be published on the CAA and ATIPAC websites at the same time.

I turn now to the specific questions posed by the noble Baroness, Lady Randerson. How do consumers know what is or is not a linked travel arrangement? The package travel directive specifies that businesses must inform the consumer whether or not they are purchasing an LTA before they make the purchase. Given the complications that I referred to in my previous answer, the way this will be done in practice will be considered in the consultation that we will publish later this year.

The noble Baroness also asked what will happen to this Bill if we leave the EU with no deal. ATOL will continue, as the amendment states, and this House will decide on any changes that are to be made, deal or no deal. The Government remain committed to strong consumer protection and will continue to be so after Brexit.

In the light of those answers, I hope the noble Baroness will withdraw her amendment.

**Baroness Randerson:** I thank the Minister for that answer. The Air Travel Insolvency Protection Advisory Committee—a name which does not trip off the tongue of everyone in the pub at the weekend—reports to the Secretary of State. Is that report published? Has that report ever been debated in Parliament? If it has, what is the process to enable a debate about the annual report from ATIPAC?

I am very pleased to hear that there will be consultation. Can the Minister assure us that when the regulations are eventually produced they will reflect the need not just to follow the letter of the law but to give clear and prominent information to consumers about what they are purchasing and that there will be a way of ensuring that people are made much more aware of the difference between using PayPal and credit cards on one side and debit cards on the other?

I fear that we all get used to clicking on terms and conditions. We gave up reading the small print many years ago because it is carefully designed to deter all but the most obsessive and leisurely person. We need some kind of widely recognised industry standard that is easily understandable to people who do not devote their lives to consumer protection issues so that they know the difference between one sort of package of measures they are buying and another. I wonder whether the Minister is able to give some reassurance on that.

**Lord Callanan:** I think I am able to provide the reassurance that the noble Baroness is looking for. ATIPAC reports are published on the CAA and ATIPAC websites, but if the noble Baroness would find it helpful I would be happy to place a copy in the Library of the House to make them more widely available. I am not sure that many people would want to read them, but I am happy to do that if the noble Baroness would find it useful. I am not aware that the report has ever been debated in this House or the other place, but time is made available for general debates and Opposition day debates and I am sure that through discussions among the usual channels time could probably be made available for a debate on the topic. I cannot give a commitment on behalf of the House authorities, but if the noble Baroness wishes for such a debate, I am sure her party leadership could pursue those discussions.

The noble Baroness made a very good point about information provision. Consumers need to be kept fully informed about the differences—whether it is a linked travel arrangement or a package that they are purchasing—and the relevant levels of protection that will apply. That is something that we want to explore in the consultation. As I said, the linked travel arrangement is a new concept, introduced by the directive. It is not entirely clear exactly what one would comprise at the moment. In the consultation that we will be issuing on the draft regulations, we will want to explore how consumers could be made aware of and kept informed about the difference in levels of protection. We are adding an additional level of complication into what is currently a relatively simple, well-understood scheme. The information provisions exist in the directive and we will be looking to implement those through secondary legislation in the public consultation that we will hold. I hope that answers the noble Baroness's question.

**Baroness Randerson:** I thank the Minister for his answer. I am happy to withdraw the amendment.

*Amendment 3 withdrawn.*

*4.45 pm*

*Amendment 4*

*Moved by* ***Lord Rosser***

**4:** After Clause 1, insert the following new Clause—

"Potential impact on consumer protection of UK consumers using EU-based companies

(1) The Secretary of State may, within two years of this Act coming into force, require that the Air Travel Insolvency Protection Advisory Committee review the impact on UK consumers of booking a holiday through an EU-based company rather than a UK-based company.

(2) The Secretary of State must lay a report of any assessment carried out under subsection (1) before both Houses of Parliament."

**Lord Rosser:** This amendment would enable the Secretary of State to require the—now well-known from our previous debate—Air Travel Insolvency Protection Advisory Committee, within two years of the Act coming into force, to,

"review the impact on UK consumers of booking a holiday through an EU-based company rather than a UK-based company",

and require the Secretary of State to lay such a report before both Houses of Parliament.

As we know, the Bill updates the Air Travel Organiser's Licence so that it is harmonised with the 2015 EU package travel directive. In so doing, the Bill extends ATOL to cover a wider range of holidays and protect more consumers. The expectation is that UK travel companies will be able to sell more easily across Europe, since in future they will need to comply with protections based not in the country of sale but in the country in which they are established. The purpose of the amendment is to provide a degree of certainty that there will be a review, in this case via the Air Travel Insolvency Protection Advisory Committee, of the impact of the ATOL revisions to help ensure that there are no adverse impacts on UK consumers using EU-based companies, since the intention and objective of the Bill is to improve the range and extent of the protections available.

There is a possibility that with the change to EU-based companies having to comply with ATOL-equivalent insolvency protections applicable in the member state where a business is based, rather than in the country of sale, such companies selling holidays to UK consumers may not offer the same ease and lack of expense of processing a claim which are afforded by the ATOL provisions that would apply to a UK company. It appears that some half a million passengers could be affected.

The review referred to in the amendment would enable hard facts to be obtained on the impact of this legislation on UK consumers booking holidays through EU-based companies, and the extent to which the protections offered, the processes and timescales for securing recompense and the costs involved differ from our ATOL arrangements. With that information available, the Government would be in a position to make informed decisions on what further action, if any, could be taken or pursued to help ensure that UK consumers using EU-based companies were either not disadvantaged or at least made aware beforehand that they were liable to find themselves in a less favourable position.

A broadly similar amendment was pursued on Report in the Commons. The Minister there appears to have taken some 40 minutes over his reply, taking interventions like there was no tomorrow, some 15 of which were from his own Back-Benchers. One, as the debate reached its pinnacle, was as follows:

"May I say to my right hon. Friend, with the seriousness and candour that the moment demands, that he is a bright flame on a dull and grey afternoon to which the moths of Parliament are being drawn?".—[*Official Report*, Commons, 11/7/17; col. 234.]

The Minister's response was to wonder whether anyone else wanted to intervene in a similar vein. One could take the view that in the Commons the Government were regarding the whole debate on the amendment as a joke. Alternatively, one could take the view that, since a vote was coming at the end of the debate, the Government were playing for time because they were not sure whether sufficient of their troops had yet returned to be confident of their winning the vote. Since there will not be a vote on this amendment as we are in Grand Committee, I hope to have a more adult debate than the Government promoted in the Commons.

When the Government Minister commented in the Commons on a broadly similar amendment to the one we are discussing now, he said:

"It will be for protection schemes in other member states to provide the protections for UK consumers to which the amendment refers. Because that is not our responsibility—we do not have the power that the amendment suggests that we should have—I am not sure that the amendment works on a technical level".—[*Official Report*, Commons, 11/7/17; col. 226.]

I am not sure what power suggested in that amendment the Commons Minister was referring to, but his comment was not exactly encouraging. However, despite having said that the issue referred to in the amendment in the Commons was not our responsibility, the Government Minister in the Commons went on to say that the Air Travel Insolvency Protection Advisory Committee, which provides advice to the Civil Aviation Authority, the Air Travel Trust and the Secretary of State on the protection of consumers, would receive a letter from him asking it to review the implementation of the changes provided for in the Bill. They presumably include the impact on UK consumers of booking a holiday through an EU-based rather than UK-based company.

However, the promise of a letter to the ATIPAC from a Minister who had already declared that the matter is not our responsibility is frankly not sufficient. This is a serious issue with potentially serious consequences for passengers, as recent events relating to Monarch Airlines have shown. We need something on the face of the Bill which, while not compelling the Government to require the review from the ATIPAC, makes it much more difficult for the Government not to proceed down this road, and certainly would in a situation where complaints were coming in from passengers booking a holiday through an EU-based rather than UK-based company, over arrangements and procedures on insolvency protection. I beg to move.

**Lord Callanan:** My Lords, please forgive me if I repeat a number of the points that I made on the previous answer, as this covers the same ground. We are proud that we have always been a leader when it comes to providing protection for holidaymakers. We set up the

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ATOL scheme in UK legislation several years before the original package travel directive was agreed in Europe. That is the significant point. It means that the ATOL legislation is not dependent on European legislation. The Bill will harmonise ATOL with the package travel directive in the immediate term. However, the ATOL legislation and protection will still exist and remain in place as we leave the EU.

I fully understand why this amendment has been proposed, in order that we consider the ongoing impacts on consumer protection as we leave the EU. As I said earlier, this is already catered for in the legal and policy framework in place. As referred to by the noble Lord, Lord Rosser, during the Commons passage of the Bill, my colleague the Minister of State for Transport, the right honourable John Hayes, wrote to the Chair, John Cox, to consider this precise point in ATIPAC's 2017-18 annual report. I am sure that they are already minded to keep a close eye on consumer protection both before and after we leave the EU. In fact, these reports will be submitted to the Secretary of State within four months of the end of each financial year and will be published on the ATIPAC website.

The noble Lord, Lord Rosser, also asked about HMG's problem of our UK passengers purchasing from EU businesses. If a travel business is established in Europe, it will be able to sell holidays to consumers in the UK without ATOL protection. However, it would still be obliged to have in place insolvency protection that meets the strict requirements of the new directive. This protection will be broadly similar to ATOL and will need to cover both online and traditional package holidays.

In light of the explanation that I have given and the scrutiny and the annual review already in place, I hope that the noble Lord will feel able to withdraw his amendment.

**Lord Rosser:** I am disappointed but not surprised by the answer that I have received. One issue will relate to EU-based companies that are selling holidays here but which are required to conform to requirements in their own nation. What will the process be for obtaining that compensation and protection? What expenditure may have to be incurred by a UK resident who has purchased a holiday through an EU-based company? Those processes and procedures, and the cost of going through them, may well be rather more extensive than might apply in relation to a UK company under our own ATOL arrangements. That aspect of it has been rather ignored in the answer given. We come back to a situation where the Government seem willing to write letters to people and to stand up and say in one of the Houses of Parliament, "Yes, we intend to do this", but when it comes to being asked to put their words on the face of the Bill so that everybody can see their commitment, making Ministers much more accountable, and being required in this case to place the report before both Houses of Parliament, the Government resile from such a suggestion without giving a proper justification as to why it would be inappropriate or unworkable. I am disappointed with the reply, since I think that the Government could have gone further, but I beg leave to withdraw the amendment.

*Amendment 4 withdrawn.*

***Clause 2: Air Travel Trust***

*Amendment 5*

*Moved by* ***Baroness Randerson***

**5:** Clause 2, page 1, line 22, at end insert—

"(6A) Any amendments to the definition of "Air Travel Trust" in subsection (5) may not be laid before Parliament until the Secretary of State has published a full impact assessment and undertaken a consultation on the proposed amendments."

**Baroness Randerson:** Amendment 5—it seems that Amendment 6 is very similar—addresses Clause 2, in which the Government are asking us to give them a power to set up a separate trust for linked travel arrangements. It is a very open-ended power which runs counter to the Government's actions of the week before last. When Monarch failed, the Government decided, very sensibly, to organise repatriation for all customers of Monarch regardless of whether they had bought package holidays or simply a flight. In essence, the Government were setting aside the special status of package holiday customers, for which they had each paid £2.50. The Government's action might have been sensible, but it rather undermines the Minister's argument at Second Reading that it might not be appropriate for one group of more cautious customers to have to subsidise, perhaps indirectly, compensation for other customers who chose a more risky option.

The Monarch case has also illustrated the sheer size and impact of such a failure. The current ATOL trust struggled for some years with more calls on its funds than it could cope with, and it had to be subsidised by the Government. It has been in good health recently, but that history is there. Any fund like this succeeds because it agglomerates many small sums of money into one large total. If you start setting up several funds, you are disaggregating the total money available, and that undermines the principle.

The Minister has been absolutely clear by indicating that currently the Government have no intention of setting up a new trust fund but just want the power to do so if they choose to in the future. This is a dangerous principle which is increasingly creeping into government legislation whereby the Government are gathering up "just in case" powers, giving no clear indication of how they intend to use them. I would argue that they have to do better than that in order to justify including this power in the legislation. We need a more detailed justification, a consultation and an impact assessment before this additional wide power can be considered acceptable. We oppose the power in principle as well as being concerned about the practical impact if it is used. I beg to move.

*5 pm*

**Lord Rosser:** I have Amendment 6 in this group to which I would like to speak. As the noble Baroness, Lady Randerson, has said, it is similar to, although not exactly the same as, the amendment that she has just moved. My amendment states:

"The Secretary of State may not amend the definition of 'Air Travel Trust' under subsection (6) until a report outlining the criteria under which those amendments have been proposed has been laid before both Houses of Parliament".

Clause 2 relates to the Air Travel Trust, which holds the money that is used to refund consumers under ATOL protection. It gives the Secretary of State the power to define separate trust arrangements to reflect different market models. Presumably it has been included in the light of changes in the package holiday market, but no doubt also in the light of Brexit because changes to ATOL and the Air Travel Trust could conceivably be considered necessary by the Government in the event of our leaving the European Union, depending on the basis and terms on which we left. Indeed, in the light of the discussion we had earlier on Monarch Airlines, the Government's Statement on Monday and now looking at all the options, it could well be that, as a result of looking at those options, the Government have come to the conclusion that changes might be needed as far as the Air Travel Trust and ATOL arrangements are concerned.

During the Commons Committee evidence sessions in relation to the measures contained in this Bill, a trustee of the Air Travel Trust said that he recognised the possible merits of separating the trust to reflect variations in the products in the market, but that we are not there yet and that it would not be appropriate for the Government to use the Bill as a means of making wholesale changes without due consultation. Moreover, the impact assessment does not consider proposals for ATOL reform beyond what is currently required. In the Commons, the Government declined to accept an amendment requiring them to undertake a full impact assessment and consultation before bringing forward regulations to create any new air travel trusts through an affirmative resolution—a very similar amendment to that moved by the noble Baroness, Lady Randerson. In response, the Government said that there would be full consultation and a comprehensive impact assessment in respect of any regulations to be made under these measures. Can the Minister say whether that applies to any measures covered in the whole of the Bill or did the Government's response refer only to regulations made under new subsection (6) inserted by Clause 2(2) relating to air travel trusts? The Government's lack of enthusiasm to date for putting these declarations of intent into the Bill, bearing in mind the considerable powers which subsection (6) gives the Secretary of State, is worrying.

We have therefore tabled Amendment 6. It would mean that prior to amending the definition of "Air Travel Trust" the Secretary of State would have to lay before Parliament a report setting out the criteria under which the amendment was being proposed. This would at least enable a view to be formed on the need, or otherwise, for such amendments, ensure a degree of consistency over the reasons for bringing forward such amendments and enable a view to be taken on whether the amendments address the reasons or criteria that had been advanced for bringing them forward. That does not seem unreasonable in the light of the extent to which the powers given to the Secretary of State under subsection (6) to make potentially significant changes by regulations could be used, bearing in the mind the impact they could have, to which reference has already been made, on the viability and sustainability of the current Air Travel Trust or a future, more fragmented trust and thus the whole ATOL protection scheme.

**Lord Callanan:** I again endorse the purpose of the amendments because carefully crafting policies and the regulatory framework is the key to good governance. The Government have no plans to change the current Air Travel Trust deed. The rationale behind this clause responds to the travel sector's view. In the light of responses to our consultation last year, the Government are proposing to take the power to establish additional trusts to give them the flexibility to make separate provision—

**The Deputy Chairman of Committees (Lord Geddes) (Con):** I hate to interrupt the Minister, but a Division has been called in the Chamber. The Committee stands adjourned until 5.15 pm.

*5.05 pm*

*Sitting suspended for a Division in the House.*

*5.17 pm*

**Lord Callanan:** My apologies for the delay: when you walk through the Lobby, you get trapped by Members wanting to talk to you about various issues. I return to the two amendments. In light of the responses to our consultation last year, the Government are proposing to take the power to establish additional trusts to give them the flexibility to make separate provision for different types of risk, or different business models. The impact of failure can be significant, as we have just witnessed in the failure of Monarch Group, to which Members have referred. This makes the need for regulatory flexibility vital for market efficiency and consumer certainty.

This change has the potential to make the scheme's operation easier for industry to apply and more robust for the consumer. The new looser types of package arrangement called linked travel arrangements are the most obvious example. Currently, we do not know how the industry will react to this innovation and whether riskier products will appear that might require us to separate the trust arrangements. Richard Moriarty from the CAA said in the evidence session when this clause was part of the Vehicle Technology and Aviation Bill that,

"it would be prudent and sensible for Government to have the flexibility to respond to that".—[*Official Report*, Commons, Vehicle Technology and Aviation Public Bill Committee, 14/3/17; col. 65.]

There is already a legal duty in Section 71B of the Civil Aviation Act which places a requirement on the Government and the Civil Aviation Authority to consult if we introduce regulations under Section 71A. Like my right honourable friend John Hayes, Minister of State for Transport in the other place, I am happy to give the noble Baroness a commitment today that there will be a thorough impact assessment and consultation before we use these powers.

Throughout the ATOL review process we have consulted on the basis of impact assessment. In 2012 we changed the Civil Aviation Act to better reflect current market practice. In 2013 we launched a call for evidence on our long-term review of the ATOL scheme. Last year we consulted on the very changes to the Civil Aviation Act that we are discussing today, and shortly we will launch a series of consultations on the detailed regulations that will follow the Bill. As noble Lords can see, each stage of this work has been the

[Lord Callanan]
subject of extensive impact assessments and consultations every step of the way. Indeed, both the Civil Aviation Authority and the industry's leading trade body—ABTA—have commended the Government's approach to reform. We will be working closely with them and consulting with industry as and when we develop plans to implement this clause. Given that the Government are already obliged by Section 71B to consult on the use of these powers, it is not necessary to introduce a further requirement in the manner described, particularly when we are midway through an extensive process of consultation and engagement, which has been commended by those involved.

The noble Lord, Lord Rosser, asked whether the requirement to consult is for all ATOL powers. The regulations under Section 71A of the Civil Aviation Act include a requirement to consult for all the powers. The noble Baroness, Lady Randerson, asked whether the Government's action to repatriate passengers under the Monarch scheme undermined the ATOL scheme. I think she has an arguable case. I hope she is not suggesting that we could segregate people in overseas airports and say, "You are protected by ATOL and you are not". As I have explained, the Monarch situation was an exceptional collapse. There was insufficient capacity on alternative airlines. Had it happened at a less busy time of the year, it may not have been necessary for the Government to step in and get people home. We looked at the particular circumstances of that airline, the sheer number of passengers involved and the lack of available capacity on alternative airlines to get people home.

However, it is important to say that the ATOL scheme is an important part of the rescue operation. It will help refund the repatriation costs for the ATOL-protected passengers and they will also be covered for additional accommodation and subsistence costs if they are delayed beyond their original date. ATOL protection will also ensure that any protected passengers who are yet to travel with Monarch will receive a full refund. As I mentioned earlier, the Government will be seeking the recovery of costs from card providers—both credit cards and debit cards—and the travel industry has also been asked to contribute towards the costs of the operation. I understand the concentration on the Monarch collapse but those were exceptional circumstances and, as I said in my Statement yesterday as well as earlier today, we would not want to be hamstrung by that in future.

**Lord Rosser:** I will not say that the Minister has dismissed this—that was not the way he did it—but he referred to the Monarch Airlines scheme as being exceptional, somehow in the hope that it will not happen again, and I am sure that hope would be endorsed, but the Monarch Statement given on Monday said that the Government's,

"efforts will turn to working through any reforms necessary to ensure that passengers do not find themselves in this position again ".—[*Official Report*, 9/10/17; col. 46.]

So the Government have to produce measures and proposals that will ensure that if there is another circumstance like Monarch Airlines, passengers do not find themselves potentially stranded without any protection and the Government do not have to pay the cost of getting them home. That is the commitment the Government have given, is it not? The Government can say that Monarch is exceptional, but they have committed themselves to making sure that there are measures that prevent passengers being stranded not knowing whether the cost of bringing them home will be paid for. The Government are committing themselves to measures to ensure that that cannot happen and that there will be certainty for passengers that the cost of getting them home will be met.

**Lord Callanan:** As we said in the Statement, we will be looking at the feasibility of extending the ATOL scheme. I referred earlier to some of the difficulties involved in that. We have also said that we will look at the insolvency regime, but that does not necessarily provide an easy answer. We are looking at the circumstances. We are still in the middle of the repatriation operation, but we will look at the circumstances and see whether there is anything we can do that would obviate the need for government to step in in future.

I have given reasons why these amendments are unnecessary, along with assurances, particularly with regard to full consultation and providing impact assessments. The Government have a good record in this area, which I have already outlined. We have consulted on these and all previous changes and have produced impact assessments, so I hope that the noble Baroness will withdraw her amendment and the noble Lord, Lord Rosser, will not move his amendment.

**Baroness Randerson:** I thank the Minister for his detailed answer. I entirely understand that the Monarch situation was unusual, but every situation is in its way unique. I appreciate the dilemma the Government found themselves in. I was simply exploring the basic principles on which the compensation system is based. I will read the record carefully, but I am still to be fully convinced by the Minister's response in relation to the need for additional trust funds. If he is able to give us any further information about the Government's plans in relation to that, not this afternoon, but in writing, it would be helpful.

I am grateful for the Minister's confirmation that there will be an impact assessment, but I wonder whether he can confirm now in one or two words what he means when he says that the Government will shortly launch a consultation on detailed regulations associated with this Bill. What does "shortly" mean?

**Lord Callanan:** I cannot say it in two words, but would "before the end of the year" help clarify what I mean?

**Baroness Randerson:** That is very helpful. As ever, the House of Lords has been able to deal with this important issue with more brevity than the House of Commons, and I am happy to beg leave to withdraw the amendment.

*Amendment 5 withdrawn.*

*Amendment 6 not moved.*

*Clause 2 agreed.*

*Clauses 3 and 4 agreed.*

*Bill reported without amendment.*

*Committee adjourned at 5.28 pm.*