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House of Lords

Wednesday, 26 October 2011.

3 pm

Prayers—read by the Lord Bishop of Ripon and Leeds.

Elections: Registration

Question

3.06 pm

Asked By ***Lord Bach***

To ask Her Majesty's Government what are the reasons for their policy of making individual voter registration voluntary.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, the Government's approach reflects the fact that it is not an offence not to be registered under the current system. This will not change under the new system. The offence of not providing information to an electoral registration officer—for example, when making a household enquiry—will be retained. It will not be extended to require an individual to apply to be registered.

Lord Bach: My Lords, I thank the Minister for his Answer, as far as it goes. He will know that at least 3 million of our fellow citizens, and probably more, already are not registered to vote at all. The independent Electoral Commission is of the view that if registering to vote becomes a voluntary activity, as the White Paper proposes, the result could be that up to 10 million people will fall off the electoral register, and that rates could fall in some areas from 90 per cent down to 65 per cent. Up to 35 per cent of the adult population could be disenfranchised. Is such a consequence acceptable in a mature democracy? Does the Minister agree that if such an event were to happen, no longer could we claim to the world, as we can today, that in Britain we live in a democratic country?

Lord McNally: My Lords, of course it is not acceptable; but neither is it acceptable for a mature political party to go round shroud-waving on a conclusion which involved joint deliberation by the parties that the old system had become increasingly distrusted and that voluntary registration—which would eliminate, or do a lot to eliminate, fraud, and create greater public confidence in the system—should be the way forward. The way forward proposed in the White Paper gives enough guarantees and assurances to show that the kind of language that the noble Lord has just used is, quite frankly, scare tactics which are not worthy of him or his party.

Baroness Gardner of Parkes: My Lords, coming from a country where voting is compulsory, I can understand why it should be compulsory to be on the register. However, as voting is voluntary in this country, what is the difference between not wishing to vote and not wishing to register? Can the Minister please clarify?

Lord McNally: Unlike in Australia, not wishing to vote remains an inalienable right of the British people. Registering is a civic duty and we hope that it will increasingly be seen as such. I certainly hope that over the next few years all the political parties will embrace the idea of an individual register and use their influence to ensure that people exercise their right. Of course, once people are on the register they will retain their right not to vote.

Lord Campbell-Savours: My Lords, on the question of shroud-waving, will the noble Lord explain to us why, when this stupid system was introduced in Northern Ireland, the registration of voters totally collapsed? Why did that happen?

Lord McNally: Perhaps someone from Northern Ireland will intervene, but, again, the language is not borne out by the facts. It did not totally collapse. In this gradual process that we are bringing forward, we are learning from the examples and lessons of the Northern Ireland experience, as well as looking at some of the practices that are going on there now. Northern Ireland votes are a standard joke but we are now learning lessons about voluntary registration and its success in Northern Ireland.

Lord Marks of Henley-on-Thames: My Lords, the existing system, whereby householders can in theory be prosecuted for failing to return their registration forms, has not worked, largely for the simple reason that no one can tell who the responsible householder is in households with more than person. Therefore, does not individual registration offer a good opportunity at least to consider a meaningful compulsory system, and is that not important, given that the electoral register determines not just the right to vote but also the call-up for jury service?

Lord McNally: Those are very valid points. To put the Question of the noble Lord, Lord Bach, into perspective, I again emphasise that the annual canvass will continue to support the maintenance of the electoral register. Significant work, including public awareness campaigns by the Electoral Commission, will be funded in 2014-15 to manage the transition to individual electoral registration. In both those years, door-to-door canvassing will be used by electoral registration officers as part of a wide suite of powers to encourage people to register to vote. This is a step forward against electoral fraud. Instead of making emotional interventions, it would be good if the Labour Party would endorse it and get on with encouraging people to register.

Lord Wills: My Lords, all the evidence that I saw when I was the Minister responsible for these matters in the previous Government suggests that the introduction of individual registration, no matter how desirable for other reasons, is going to carry with it severe risks that millions of otherwise eligible voters will fall off the register. That is why, when the previous Government introduced this measure, they locked it into the achievement of a comprehensive and accurate register.

[LORD WILLS]

It is also why the Conservative shadow Minister at the time said on the Floor of the other place that,

"we agree with the Government that the accuracy, comprehensiveness and integrity of the register … is paramount ... I do not intend to vote against these Government amendments because … I believe that it is right to take this matter forward carefully and step by step".—[*Official Report*, Commons, 13/07/09; col. 108.]

The Liberal Democrats also supported this approach. Can the Minister please tell your Lordships what new evidence he has seen that has persuaded him that the careful approach adopted by the previous Government and supported by both main parties in opposition is now wrong?

Lord McNally: We are going forward by learning from the lessons and experience of Northern Ireland.

Noble Lords: Answer the question.

Lord McNally: I am answering the question. From some of the questions, you would not believe that we will be having a two-year period in which we will be taking a belt-and-braces approach with the present system running in parallel and with every opportunity for democratic organisations and others to persuade people voluntarily to go on the electoral register and exercise their civic duty. The answer is that we have decided on a belt-and-braces approach, which will allow a smooth transition to a new scheme. It is a perfectly sensible approach, which draws on some of the experiences of the previous Government. I think that the Labour Party is being disgraceful on this. It should get on with recruiting members and persuading people to register to vote instead of using these scare tactics, which, quite frankly, are not worthy of it.

Saudi Arabia: Driving Licences

Question

3.14 pm

Asked By ***Baroness Smith of Basildon***

To ask Her Majesty's Government what consideration they have given to the recognition of Saudi Arabian driving licences in the United Kingdom.

Earl Attlee: My Lords, no consideration has been given to the exchange of Saudi Arabian driving licences in the UK. Consideration would be given only after an approach has come from the Government of Saudi Arabia to recognise their driving licences. To date, no such approach has been made.

Baroness Smith of Basildon: My Lords, I am slightly confused by the Minister's Answer. My understanding is that Saudi Arabian driving licences are valid in this country for up to a year for Saudi Arabian citizens. As he will be aware, Saudi Arabia is the only country in the world to make it a criminal offence for women to drive. Recently, a sentence of 10 lashes was handed out to a woman driver, although that was later commuted. Will the Minister consider the current position? Will he look at whether the UK recognition of Saudi Arabian driving licences for a year should be withheld until driving licences are available to all citizens and not just to male citizens? Can he discuss with his Foreign Office colleagues what action can be taken by the British Government to raise concerns about the Saudi Arabian Government's position on this appalling discrimination?

Earl Attlee: My Lords, on the substantive question about recognition or non-recognition of Saudi driving licences, the noble Baroness will recognise that we are under a treaty obligation in terms of the international circulation order. However, we welcome King Abdullah's overturning of the recent sentence of lashing for a woman convicted of driving. It is well known that this Government, like their predecessor, have particular concern about some aspects of human rights protection in Saudi Arabia, most notably women's rights. The UK has consistently called for women in Saudi Arabia to be able to participate fully in society. That means removing legal and cultural barriers, like the guardianship system and the ban on women driving.

Baroness Falkner of Margravine: My Lords, does my noble friend accept that the ban on women driving in Saudi Arabia, of course, has nothing to do with theology or Islam and has everything to do with the desire of men in Saudi Arabia to remain guardians of women—in other words, discrimination? Will he tell the House how the United Kingdom voted when Saudi Arabia was elected on to the executive board of UN Women, the agency for gender equality and empowerment for women? If he does not have the answer with him, perhaps he might write to me saying how the UK voted?

Earl Attlee: My Lords, the noble Baroness has asked me quite a detailed question, and I am afraid that I shall have to write to her.

Lord Davies of Oldham: My Lords, as the Arab spring is showing some buds even in Saudi Arabia, with regard to the participation of women on the Consultative Council, could the Government at least indicate to the Saudi Government that, from our experience, women are safer drivers than men?

Earl Attlee: My Lords, I am sure that when we talk to the Saudi Arabian Government, we make that point.

Lord Berkeley: My Lords, surely the noble Lord could say straight to the Saudi Arabian Government, "We are not going to enter into these negotiations until you allow all women of the right age and with the right experience to be able to drive in Saudi Arabia and we will not accept those licences in this country until that is achieved".

Earl Attlee: My Lords, I think the best way of achieving our objective—I think we are clear about our objective—is to apply steady, consistent pressure to states like Saudi Arabia. We will not get them to roll over overnight. No doubt the Saudis give us friendly advice about, for instance, underage drinking and other cultural matters.

Public Disorder: Restorative Justice

Question

3.19 pm

Asked By ***Baroness Massey of Darwen***

To ask Her Majesty's Government whether they are considering the use of restorative justice in dealing with the riots in August.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, we are committed to delivering more restorative justice. We want to ensure that victims of the riots have a chance to explain the impact on them and that offenders face up to the consequences.

Baroness Massey of Darwen: I thank the Minister for that response. Would he agree that restorative justice schemes have resulted in victim satisfaction and cost-benefit analysis, and that reoffending has been reduced by such schemes? Would he say how many such schemes there are and whether they will be rolled out more extensively?

Lord McNally: Initially there were three such schemes. There have been about 60 enquiries about restorative justice, and we are very keen to roll out the schemes as quickly as possible. In response to the recent riots, there have been elements of restorative justice in both London and Manchester. I assure the noble Baroness that it is an element of the criminal justice system that we are very eager to learn lessons from and to expand.

Baroness Sharples: Would the Minister tell us why the courts in Westminster have closed?

Lord McNally: I am taking a wild guess here. I think it is probably because we have opened a new Westminster court at the other end of town. I am trying to remember the name of the road, but just along from Baker Street—

A noble Lord: Horseferry Road.

Lord McNally: No, I know Horseferry Road. Thank you.

Baroness Crawley: Marylebone Road.

Lord McNally: Marylebone Road. Thank you. I am about to give the right answer now. I appreciate how convenient it was for Members of both Houses to be in Horseferry Road, but in fact they now have to go to a splendid new court in Marylebone Road.

Baroness Trumpington: Is the Minister aware that the Horseferry Road courts, which I presume are the ones he is talking about—in which I sat as a magistrate for several years, although never, I regret to say, when the noble Lord was present—were new buildings and new courts?

Lord McNally: I think I would prefer Judge Jeffreys rather than the thought of being up before the noble Baroness. Again, I will write with full details, but I suspect that under the previous Administration—

Noble Lords: Oh!

Lord McNally: No. The Marylebone Road building is a very fine building and will be a great credit to the system, but I presume that we will be redeveloping the Horseferry Road site to the benefit of the taxpayer.

Baroness Young of Hornsey: My Lords, will the Minister inform the House about the extent to which restorative justice has been used in sentencing young people under the age of 18 as a result of the riots in August?

Lord McNally: I will have to write to the noble Baroness with the specific details but I know that it has been used much more in recent times, and with good reason. It is interesting that *Resolution*, the magazine of the restorative justice system, reported an ICM poll after the riots that said 88 per cent of victims thought that restorative justice should be used and 94 per cent said that offenders should be held responsible for the repair and harm caused to victims. Restorative justice, when it is effectively used both as a punishment and as a rehabilitation measure has been shown to be much more effective in securing non-reoffending than sending to secure accommodation. I will write to the noble Baroness with the facts that bear out that assertion.

The Lord Bishop of London: In the light of the events in August and of the substantial reductions in the youth service in most London boroughs and other places, do the Government have any plans to assist those voluntary organisations with a proven track record in engaging with hard-to-reach young people, many of whom were involved in the events of August? I am thinking of organisations such as XLP.

Lord McNally: Within the budget constraints that affect both central and local government, we are looking to the voluntary sector to continue to play a part in this area. Where and when we can make resources available, we will do so. There is no doubt that where the voluntary sector, including churches, plays a positive role in a community, the impact on such issues as vandalism and small-scale crime is very favourable, so we will certainly be keeping that in mind.

Baroness McIntosh of Hudnall: My Lords, in view of the Minister's answer to the noble Baroness, Lady Young of Hornsey, does he see any tension or contradiction between his declared support for restorative justice and the attitude taken by the courts to many of those who were caught up in the riots?

Lord McNally: Possibly. In the end, it must be the courts, the judges and the magistrates who determine sentencing. It was right that the courts took into account in some of those sentences the fact that the offences occurred in the process of a riot. The riot was a legitimate factor for the courts to take into account in determining sentencing. In the broad sweep of things, I believe, as I indicated to the noble Baroness, that the evidence is that proper restorative justice that has a real impact on the offender is more effective in avoiding repeat offences than sending the offender to a young offender institution. I hope that we can develop a sentencing policy that is based on the facts and what works rather than on knee-jerk reactions.

Baroness Hussein-Ece: My Lords, given the successes of restorative justice, how widely are the principles being used and taught in pupil referral units and, more widely, in schools to enable young people to know that they have to take responsibility for their own actions?

Lord McNally: Increasingly so. This is one of the things that most attract me and others to the idea of restorative justice bringing the offender face to face with the victim. We are being very careful in consulting victims and victims' organisations about how restorative justice fits into this. There is no doubt that sometimes a face-to-face meeting between the offender and the victim has a beneficial effect on both. On the other hand, you do not want a system that revisits on the victim a trauma from which they have recovered. In that respect, we are, I hope, being sensitive. People genuinely want to see restorative justice that has an element of real punishment and real work in it to win public confidence in the exercise.

Lord Imbert: My Lords, does the Minister agree that victim satisfaction, which is one of the cornerstones of restorative justice, is the most important factor in justice at any level?

Lord McNally: My Lords, I agree entirely. One of the things that we are consulting on, working on and hoping to bring forward a paper on shortly is the greater involvement of victims in the justice process. Since it was the noble Lord, Lord Imbert, who asked the question, I also find that the buy-in by police to restorative justice is another factor that gives me encouragement that it is the right way forward.

Lord West of Spithead: My Lords, I understand that HMIC is looking at the riots to learn lessons for the police about the handling of riots in the future. When will that report be coming out and will it be freely available for people to see?

Lord McNally: I would sincerely hope so. There are, as the noble Lord will know, a number of cross-Government studies as well. I would hope, again, that those are published, because I think it is important that we have a proper, healthy debate, based on the facts, to show us the way forward after the summer disturbances.

St Paul's Cathedral

Question

3.30 pm

Asked By ***Lord Lee of Trafford***

To ask Her Majesty's Government whether they intend to offer St Paul's Cathedral any assistance in maintaining the right of access and passage to the cathedral.

Lord Lee of Trafford: My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare an interest as chairman of the Association of Leading Visitor Attractions, of which St Paul's is a member.

The Minister of State, Home Office (Lord Henley): My Lords, everybody has a right to peaceful protest, but that right comes with responsibilities, including respecting the rights of others. I understand that the right reverend Prelate the Bishop of London has asked protestors to leave and so enable the cathedral to reopen. The Government believe that the protestors should comply with this request. The police are working closely with the cathedral as they monitor the situation, and the Government are being kept informed of developments.

Lord Lee of Trafford: I am grateful to my noble friend for that reply, but there is a clear difference between a normal protest and a permanent encampment. For some years we have had the national embarrassment, which still continues, of the permanent encampment in Parliament Square. Now we have a situation where one of our major cathedrals, an icon, is closed and the surrounding traders are suffering severely. Is it not time that the Government actually came out on this and took new powers to deal with these permanent encampments? If they are not dealt with at this stage, I fear that they will spread.

Lord Henley: My Lords, the two issues are slightly different because the ownership of the land involved in Parliament Square and at St Paul's is different: at Parliament Square the land belongs to the local authority whereas at St Paul's it belongs to the church and the City of London. We have taken measures to deal with the Parliament Square problem, which were covered in the Police Reform and Social Responsibility Act 2011, and I hope that we will be able to deal with that problem shortly. As regards dealing with demonstrations of this sort on private land, I note what my noble friend says about the need to look at changes in the law. Certainly, if problems like this persist, and if we have problems like this that are likely to disrupt the Olympics or whatever, it is certainly something the Government will have to look at in due course.

Lord Anderson of Swansea: My Lords, should not the protestors be told clearly that they have made their point and that the longer they stay the more they will possibly alienate public opinion, losing potential supporters in the process. They would be far better to leave in a dignified manner, having made their point clearly?

Lord Henley: I agree totally with the noble Lord. The right reverend Prelate has made that point; the Government have made that point; others will make that point. I think it is time for them to pack up their tents and go, but we have no power to get them to go while they are on private land.

Lord Higgins: My Lords, does the Minister not agree that what is needed is not action "in due course" but action now?

Lord Henley: My Lords, I note what my noble friend has to say, but this is on private land and therefore it is a matter for the owners of that land to deal with it. We do not have the powers to deal with it at the moment, but as I said in response to the original

Question from my noble friend, obviously if we continue to have problems of this sort, this is something we will have to consider.

Lord Richard: My Lords, the noble Lord in an earlier answer referred to Parliament Square, on which he said that action would be taken shortly. We all know what "shortly" means: it can mean either "some time in the future, perhaps, when we get round to it", or "we are on the verge of taking action now, and it will happen fairly soon". Is it the first or the second?

Lord Henley: My Lords, I am sure that the noble Lord, when a Minister, has used the word "shortly" before now. We all do use it from time to time. The noble Lord will also be aware that we have given ourselves powers in the Police Reform and Social Responsibility Act 2011. Those powers need to be brought into effect. I cannot confirm precisely when, and that is why I used the word "shortly", which the noble Lord will be familiar with.

Lord Forsyth of Drumlean: My Lords, I declare an interest as I have an office in Paternoster Square. Is my noble friend aware that the police thermal imaging cameras in the helicopters flying over this camp have revealed that during the night there are very few people in these tents and that they go off home or go off to live in hotels? Is this not making the stage laugh at the audience? Do we not need to recognise this for what it is, which is a disruption and not a legitimate protest, and to take the powers necessary rather than getting involved in arguments about who owns the property? This is a clear disruption of the life of the city and the life of the cathedral, and the Government must act.

Lord Henley: My Lords, I agree with my noble friend and I am very grateful to him for pointing out that the protesters seem to be very much what might be described as part-time protesters. The sad thing is that this is on private land. Therefore, it is not a matter for the Government to intervene. It is a matter for the owners of that land, which, in this case, is the dean and chapter, to take the appropriate action. As I have said, obviously we have to look at the future and I was very grateful for the comments made by my noble friend in his supplementary question in terms of whether we need to change the law to deal with further problems later.

Baroness Symons of Vernham Dean: My Lords, the noble Lord spoke of the right to peaceful protest. Is there not also a right to worship in a church when one wants to do so?

Lord Henley: My Lords, of course there is a right to worship but it is a matter for the church authorities to decide whether they can open that church or not. I do not answer at this Dispatch Box for the church. It was the dean and chapter who decided on grounds of health and safety—whether that was right or not is a matter for them to argue—that they could not continue to open the church. That is not a matter for the Government.

Lord Elton: My Lords, is not an empty tent litter, whether it is on public property or private property, that can be removed without further legislation?

Lord Henley: My noble friend makes an interesting point. Whether an empty tent is litter is a matter that I am not going to argue now. I go back to the principle that this is something on private property and, therefore, is not something on which the Government currently have powers to intervene.

Lord Hughes of Woodside: My Lords—

Baroness Doocey: My Lords—

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): My Lords, we have had a very good Question Time and the clock is now at 30 minutes. Perhaps we should go on to the next business.

Privileges and Conduct

Membership Motion

3.36 pm

Moved By ***The Chairman of Committees***

That Baroness Scotland of Asthal be appointed a member of the Select Committee in place of Lord Graham of Edmonton, resigned.

Motion agreed.

Dog Control Bill [HL]

Third Reading

3.37 pm

Motion

Moved by ***Lord Redesdale***

That the Bill do now pass.

Lord Grantchester: My Lords, before we pass the noble Lord's Bill to the other place, I am reminded that the Minister, the noble Lord, Lord Henley, on Report in June stated that he might have some more to say at Third Reading. Seeing the new Minister in his place, perhaps I may ask him if he would like to say a few words more.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My Lords, I think the House knows that it is not customary for the House to debate the resolution that the Bill do now pass. Given my noble friend Lord Henley's commitment to say something at Third Reading, I will briefly update the House.

I hope that I can reassure all noble Lords that I understand their concerns about dog control. However, the Government cannot support this Bill. My noble

[Lord Taylor of Holbeach]
friend Lord Henley had been working on a comprehensive package of measures to deal with dangerous dogs and irresponsible dog ownership. I continue to carry on his good work, including meetings with key stakeholders, and I hope to announce this package shortly.

Lord Redesdale: My Lords, I thank the Minister for that response. This is not the first time that I have brought this Bill before Parliament. Obviously, I brought it while the Opposition were the Government and I did not get a great deal of satisfaction at that point. I thank the Minister for his reply. Perhaps I may also thank the very large number of people who are incredibly committed to making sure that we have a safer environment, including those people working with the dog-owning community, police officers and, especially, organisations such as the Battersea Dogs & Cats Home which have to deal with this growing problem. I very much hope that, in going to the House of Commons, this Bill will get a fair wind. I beg to move.

Bill passed and sent to the Commons.

Education Bill

Report (3rd Day)

3.40 pm

Clause 34 : Duties in relation to school admissions

Amendment 64

Moved by ***Lord Hill of Oareford***

64: Clause 34, page 33, line 33, at end insert—

"( ) In section 88I (other functions of adjudicator relating to admission arrangements), in subsection (3), omit paragraph (b) (and the "or" preceding it)."

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): My Lords, after our discussions about admissions on Monday, I move to a number of government amendments which achieve two important things. The first introduces an important new clause that makes it possible for anyone to object to a school's admission arrangements by referring an objection to the office of the schools adjudicator. His duty to consider all concerns that are raised to him in this way remains. This new clause builds on Clause 62, which extends the adjudicator's remit to include all academies and free schools so that admissions to all state-funded schools will be covered by the same organisation. Our other amendments relate to the issue we discussed on Monday about national oversight of and accountability for the admissions system. Our Clause 34 would have removed a duty on local authorities to send their annual report on admissions in their area to the adjudicator. This is because in the statutory code we are placing that duty on local authorities to report locally to local people.

However, during Committee I listened with care to noble Lords' concerns about the adjudicator not getting these reports to help flesh out his and the Secretary of State's national picture on admissions. Noble Lords were worried that, without these reports, the adjudicator would see admissions only where things have gone wrong or might have gone wrong whereas these reports also set out the areas where things are going right, which is the vast majority. Noble Lords were concerned that this would remove a thread of accountability running from schools through local authorities through the adjudicator to the Secretary of State, which was not our intention. So we are addressing that concern with Amendments 64 to 67. They place a duty on local authorities to send their reports to the adjudicator in addition to being published locally. This will ensure his national oversight and he will continue to be able to take these reports into account when deciding whether to investigate a school's admission arrangements. I hope that noble Lords will agree that our moves on admissions are aimed at achieving and promoting fair access and that these amendments will help achieve that end. I beg to move.

Baroness Hughes of Stretford: My Lords, I am grateful to the Minister for responding to my letter about these amendments and for the Keeling schedule which helps us to understand the impact of these further amendments. I welcome the moves that he has made and those new measures that he has just described. However, I would welcome clarification on two points before we get to Third Reading. In his letter to me in relation to my query about possibly seeing the draft regulations relating to these measures, the Minister says he believes that the admissions code should be the prime document and that regulations merely reflect the code rather than being a separate source of guidance. But the measures, even as amended in the School Standards and Framework Act 1998, provide for regulations which may make provision,

"as to any conditions which must be satisfied before … an objection can be referred to the adjudicator under subsection (2) or … the adjudicator is required to determine an objection referred to him".

I understand that to mean that, in addition to the admissions code, which will not go into such matters, any regulations coming forward can stipulate conditions that parents or, as the Minister said, any person or body—including the local authority— must meet before making an objection to a school's admissions procedure. As we have not seen the draft regulations, we have no idea of the conditions that the Government may be thinking of imposing. They could create additional hurdles for people to overcome before they can avail themselves of the opportunities to object to admission authorities' policy and practices that the government amendments have created for them. Perhaps the Minister could clarify that my understanding is correct and, if so, what conditions the Government may be thinking of including in regulations. It is important that we have an idea of those before this matter is decided.

3.45 pm

Notwithstanding the amendments that the Minister has described, and in the light of our previous discussion about whether the Secretary of State should have a duty to promote fair access, can he also clarify that if, after an adjudicator receives an objection he decides

that a school or admission authority is in breach of the admissions code, he can then only recommend what the school should do to come into compliance with the code? The power to direct a school or academy to change its policies and practices has been removed. The amendments that the Minister is talking about today do not restore that power to direct. The school will no longer be under a duty to implement whatever the adjudicator recommends or to change its admissions policies and practices if the adjudicator judges that it is in breach of the code.

If a school—let us say that it is an academy, because we are talking about schools which are their own admissions authorities—decides that the adjudicator is simply wrong and has misinterpreted its policies and practices, who then will enforce the change necessary for the academy to comply with the admissions code? In the array of measures that the Minister has put in the Bill and talked about today, it is still the case as far as we can see that that is the end of the road, no matter what the adjudicator says. If a school digs its heels in, there is no way in which the views of the adjudicator can be enforced. I would be grateful if the Minister could clarify whether, on both of those issues, my understanding is right and respond to the questions that I have asked him.

Lord Touhig: Subsection (2)(a) of the new clause proposed by Amendment 69 broadens the range of persons who can object to a school's admission arrangements. That seems to leave the door open to people who have no direct interest in a school's admissions policy to be able to object. What will the Government do to prevent these vexatious objections?

Lord Alton of Liverpool: My Lords, I support the point that the noble Lord, Lord Touhig, has made. I know that great concern has been expressed outside your Lordships' House that the provision could give rise to vexatious complaints being made by groups who have no interest whatever in the school concerned. I hope that the Minister will be able to reassure us that that will not be the case.

Lord Hill of Oareford: My Lords, it remains our intention to bring the new codes into force from February 2012. While there is no legal requirement for us to publish a further draft of the code, we intend to do so as quickly as possible, with a planned date of 31 October. Alongside those draft codes, we expect to publish draft regulations and to consult on them for four weeks ahead of laying the codes formally before Parliament on 1 December. I would be very happy to share a set of the draft regulations with the noble Baroness so that she can see them in good time.

Baroness Hughes of Stretford: Is it possible to see those draft regulations before Third Reading so that that issue is clarified before the Bill is finally disposed of?

Lord Hill of Oareford: I understand the point. Let me check where we have got to on the draft regulations and come back to the noble Baroness, if I may.

To clarify the point about binding the judgment of the adjudicator and what happens if the admissions authority does not do what the adjudicator says, the judgment of the adjudicator is final and legally binding. It cannot be ignored. The school or local authority must implement that decision without undue delay or find itself in breach of the statutory duty to have admissions arrangements compliant with the code. If they fail to do that, they risk judicial review or direction by the Secretary of State.

So the adjudicator's ruling is binding. The difference is that instead of the current situation whereby the adjudicator specifies how the admissions authority must change its arrangements to comply with his ruling, his ruling will still be binding and it will be the duty of the admissions authority to comply with his ruling and change their admissions arrangements to make sure that they are compliant.

I take the point raised by the two noble Lords about vexatious complaints. We are proposing to put in place a couple of safeguards. First, the adjudicator would not have to reconsider his decision if someone were putting in repeated allegations and accusations on which he had already decided. Secondly, we are making it clear that there cannot be anonymous allegations of that sort to try to ensure that the system works properly.

Amendment 64 agreed.

Amendments 65 and 66

Moved by ***Lord Hill of Oareford***

65: Clause 34, page 33, line 38, leave out sub-paragraph (i)

66: Clause 34, page 34, line 1, leave out paragraph (c)

Amendments 65 and 66 agreed.

Amendment 66A not moved.

Schedule 10 : School admissions: consequential amendments

Amendments 67 to 69

Moved by ***Lord Hill of Oareford***

67: Schedule 10, page 85, leave out lines 9 and 10

68: Schedule 10, page 85, line 39, leave out paragraph 5

69: After Clause 35, insert the following new Clause—

"Objections to admission arrangements

(1) Section 88H of SSFA 1998 (reference of objections to adjudicator) is amended as set out in subsections (2) to (6).

(2) In subsection (2)—

(a) in paragraph (a), for "an appropriate person" substitute "a body or person";

(b) after "that" insert "body or".

(3) Omit subsection (3).

(4) In subsection (4) omit "or (3)".

(5) In subsection (5)—

(a) in paragraph (a)(i) omit "or (3)";

(b) in paragraph (a)(ii) for "(3)" substitute "(2)";

(c) in paragraph (c) omit "or (3)";

(d) in paragraph (d) omit "or (3)".

(6) Omit subsection (6).

(7) In section 88K of SSFA 1998 (sections 88H to 88J: supplementary), for subsection (2)(b) substitute—

"(b) any other person or body.""

Amendments 67 to 69 agreed.

Amendment 70 not moved.

Clause 36 : Establishment of new schools

Amendment 70A

Moved by ***Baroness Hughes of Stretford***

70A: Clause 36, page 34, leave out line 20 and insert—

"(1) Where a new school is to be established there should be local determination as to the appropriate category of new school, based on a local assessment of need and local consultation, including with parents and the local authority.

(2) The category of the new school shall not be presumed prior to the assessment of need and consultation with parents in subsection (1).

(3) The Secretary of State shall not provide a funding incentive which supports one category of school over another."

Baroness Hughes of Stretford: My Lords, Clause 36 introduces a new presumption that every new school in the future will be an academy. The clause further restricts the power of local authorities to determine what is the most appropriate type of school when a new school is needed. Under the clause, before publishing proposals for a competition for the establishment of a new school, the local authority must obtain the consent of the Secretary of State.

The clause also enables the Secretary of State or the local authority with the consent of the Secretary of State to halt such a competition at an early first stage before the closing date for proposals to be submitted. The clause means that academy proposals in that process will no longer need to be submitted to local authorities for approval but will instead be referred directly to the Secretary of State for him to decide if he wishes to enter into academy arrangements with the proposer. The clause places a duty on local authorities to seek proposals for the establishment of an academy if a new school is needed, not any other type of school. It specifically denies the local authority the ability to publish any of its own proposals for a new foundation or community school in a Section 7 competition.

The Government's proposals essentially do three things. First, if a new school is needed in an area, they skew the whole process massively so that academies have an immediate head start over other types of school through this presumption, which will be enshrined in law. Secondly, they mean that a local community school is possible only as a last resort when all other options have been exhausted. Thirdly, they limit the role of the local authority and parents to have a say in the type of school, according to local need and the best fit with the local school system. At the very least, this appears to fly in the face of the localism agenda that the Government appear to be promoting elsewhere, but also it seems wrong in principle. Clause 36, with the presumption in favour of academies for every new school, gets to the very heart of the Government's intentions and presents the most profound change and challenge to our education system.

As we have noted before, the Government's vision is that eventually every school should be an academy. This clause will apply to primary schools, secondary schools, special schools, every kind of school—all schools as academies with power to determine their own admissions, and no formal links with local authorities or other schools. Death by default of local community schools leading potentially to thousands of atomised schools all linked, in theory, to the Secretary of State though in practice the Secretary of State and his officials could not possibly manage effectively so many relationships. Therefore schools will, to all intents and purposes, be free floating. The significance of Clause 36 cannot be overstated.

Amendments 70A and 73A seek simply to create a level playing field. Amendment 70A would mean that where a new school needs to be established, there should be local determination as to the category of school based on an assessment of local need and consultation, including with parents; that the category or type of new school would not be presumed prior to that consultation and assessment; and that the Secretary of State shall not provide any funding incentive which supports one category of school over another. Amendment 73A would consequently remove Schedule 12 to the Bill.

When this was discussed in Grand Committee, the Minister told us that the provisions do not mean that every new school would be an academy, but as the Bill stands any proposal for a new school would go forward only if a satisfactory academy solution could not be found. In that situation, the local authority would then be required by the Secretary of State to run a competition that includes the possibility of different kinds of schools. It is only if the second stage of the process fails that the local authority could bring forward proposals for a community school. The dice are loaded heavily in favour of academies and against local community schools, which can go forward only as a last resort. Our amendments would remove that presumption, restore neutrality between the appropriateness of different kinds of schools for different situations, and allow the decision to be made locally on the basis of what is best for the children and families in that area.

The presumption also seems to restrict parental choice, both in the decision about the type of school needed and in moving, in time, to one type of school only—the academy. The Government profess to be in favour of parental choice. Nick Gibb in the other place said that the intention behind Schedule 12 is,

"to increase parental choice by diversifying provisions and ensuring that parents have a genuine choice of school to which they send their children".—[*Official Report*, Commons, Education Bill Committee 29/3/11; col. 790.]

It is difficult to see how these proposals succeed in that objective. By contrast, our amendments would put parents at the centre of decision-making and thereby ensure a wider range of types of school—more diversity in the system—by not presuming there is a one-size-fits-all

solution, the academy. This seems to us to be a more mature approach and a fairer approach, opening up all options equally for local people to consider.

I hope that these amendments will be given the support of the House, particularly from those noble Lords across all Benches who, while open to the potential of academies to improve standards—as indeed I am and my colleagues are—do not believe that academies are necessarily the best and the only solution in every situation, and who want to see local involvement in decisions about new schools. I beg to move.

4 pm

Lord Avebury: My Lords, somewhat incongruously, my proposed new clause, which follows the amendment moved by the noble Baroness, refers to the closure of schools, whereas her speech and the clause that she is addressing refer to the opening of new schools. The proposed new clause removes the presumption in the existing guidance on the closing of schools that there should be no reduction in the proportion of denominational places in the area when consideration is being given to a school closure.

The Department for Education says that the current guidance, which is not on its website because it reflects the current legal position, may not reflect current government policy because it is to be replaced shortly by revised interim guidance. But the department does not intend to revise the section of the present guidance which provides in paragraph 4.32 that:

"The Decision Maker should not normally approve the closure of a school with a religious character where the proposal would result in a reduction in the proportion of denominational places in the area".

The department says in an e-mail about the guidance that there is no special protection for denominational provision in the guidance inasmuch as it,

"simply requires that due consideration should be made when deciding closure proposals for denominational provision".

The e-mail continues:

"It does not say that no such school should close, especially if the faith body supports the proposals, and particularly if the school concerned is severely under-subscribed, standards have been consistently low, or where an amalgamation of existing provision is proposed".

In other words, where normal conditions do not apply, the guidance allows the closure of a school with a religious character, a proposition with which we do not seek to argue. What we are talking about in this proposed new clause is the closure of a school where there are no exceptional conditions. The Department for Education goes on to say that,

"if you are preserving the balance of denominational provision, you are likewise preserving the percentage of non-denominational provision i.e. if you remove a non-denominational school from the system, there is also an option to remove denominational provision and vice-versa if adding provision, as otherwise the balance has increased in favour of denominational provision".

What this appears to be saying, if I have deciphered it correctly—I must appeal to the Minister to confirm my interpretation—is that within a given area the guidance does not have the effect of monotonically increasing the proportion of religious places in the schools. The closure of a secular school by itself is permissible, but the closure of a religious school is allowed only under the specified unusual conditions.

Let us see how the guidance works out in a particular area, the Freshwater and Totland area of the Isle of Wight. The council decided to reduce the provision of primary school places in the area because the number of pupils in reception had fallen significantly below the available reception places in the area over a whole decade. The closure of one of the three schools in the area was the solution, and in the council's discussion of which it was to be, the headline argument in the case of the two religious schools was the guidance already quoted. The council said in each case that the guidance was clear, as indeed it was in this case, that the decision-maker would not approve the closure of either the Catholic or the Church of England school because to do so would reduce the proportion of denominational places in the area. The fact that closing the only community school in a 12-mile radius in the west of the Isle of Wight meant that the proportion of non-denominational places in the area was reduced to zero was neither here nor there in terms of the guidance.

It must be acknowledged that in the absence of paragraph 4.32 already quoted there were other reasons why the non-religious school might have drawn the short straw in this area, but if the three schools had been equally popular and of equal standards that paragraph would have been instrumental in reaching the decision. It certainly amounts to special protection for schools with a religious character where there is a need to close one school out of several in an area, other things being equal. This amendment seeks to create a level playing field for all schools when closures are being considered.

Baroness Walmsley: My Lords, I have tabled Amendment 70C in this group, which would remove subsections (3) and (4) of new Section 6A as inserted by Schedule 11. Subsection (3) introduces a requirement for a local authority to seek the Secretary of State's approval before proceeding with an alternative model of school to an academy. Subsection (4) allows the Secretary of State to terminate the process.

It is very important that we do not reduce the ability of local parents, education providers and councils to respond quickly and effectively to new demand, and that local choice and diversity of provision are maintained. We all know that there is likely to be a big increase in demand for primary schools over the next three to four years. That will create a sudden boom in demand for pupil places and it is very important that we do not cause any delay in allowing councils to provide those places. My noble friend Lady Ritchie mentioned this in Grand Committee and she has given me permission to mention her name today although she is not able to be in her place.

Councils' primary concern when encouraging new provision in their areas should, of course, be the needs of parents. If local parents do not want new schools to be established as academies, councils should be able to retain the option to reflect parental demand without having to approach the Secretary of State for permission. My concern, and that of my noble friend Lady Ritchie, is that the requirement within this schedule risks the creation of a potentially burdensome process, which could restrict the ability of local communities to respond quickly to demand. I was very interested to receive a

[Baroness Walmsley]
copy of a letter to the noble Baroness, Lady Massey, dated 20 October, in which the Minister points out:

"Schedule 11 removes this consent requirement from certain kinds of proposals. These comprise proposals for new primary schools where they are replacing infant and junior schools, proposals for new voluntary aided schools, proposals for new faith schools resulting from the reorganisation of faith provision in an area, and proposals for a new school resulting from a faith school changing or losing its religious character."

At the bottom of page one, the Minister says:

"We are removing the requirement on the basis that it is additional and unnecessary bureaucracy."

If it is an additional and unnecessary bureaucracy for those kinds of schools, why not for all?

Baroness Massey of Darwen: My Lords, I shall speak to Amendments 71, 72 and 73. First, I thank the Minister for his conscientious response to the last stage of this Bill. He has sent out a number of letters explaining the policy, which I found very useful. Indeed, the letter he sent to me referred to by the noble Baroness, Lady Walmsley, gave some reassurances on the amendments I am going to speak to.

My main concern is that some measures proposed by the Bill may further fragment education on the basis of religion or belief. I have serious concerns about how the Bill makes voluntary-aided faith schools the easiest type of school to set up. I am also concerned about voluntary-controlled schools converting to academies, then being able to choose to increase their religious discrimination in admissions.

Currently, when a proposer wishes, for whatever reason, to establish a new foundation, voluntary-controlled or aided, or foundation special school outside of a competition, they need the consent of the Secretary of State. Following consent, the local authority runs a consultation on the proposals. The Bill, if passed in its current form, will change this, as I understand it, so that consent from the Secretary of State would no longer be needed for voluntary-aided schools, but it would still be needed for foundation, voluntary-controlled and foundation special schools.

I see some problems here. Almost all voluntary-aided schools—99 per cent of them—are faith schools. Admissions are determined by the school, which can discriminate against all pupils on religious grounds. In voluntary-controlled schools, local authorities set admissions and only about a quarter of local authorities have chosen to allow some or all of their voluntary-controlled schools to discriminate religiously, either in whole or in part.

Mr Gove has made it clear that he wishes to make it easier to set up voluntary-aided schools, which can discriminate. Such a school can use a religious test in appointing, remunerating or promoting all teachers, and even some non-teaching staff. In voluntary-controlled and foundation schools, this is only one-fifth of the teachers. The religious organisation sets the religious education curriculum in accordance with the tenets of the faith of such a school. In voluntary-controlled and foundation schools, the locally agreed syllabus is usually taught, which is not confessional to a particular faith. The religious organisation appoints more than half the governors there. In voluntary-controlled and many foundation schools, it is a quarter. While I thank the Minister again for his letter, my concerns are still not diminished and I shall watch developments on this issue very carefully.

Lord Alton of Liverpool: My Lords, I hope that the Minister, when he comes to reply to the amendments in the name of the noble Lord, Lord Avebury, and the noble Baroness, Lady Massey, will think carefully before agreeing with the premises which have been laid before your Lordships' House this afternoon. In the case of the noble Lord, Lord Avebury, I always feel some trepidation in opposing anything that he says, because he has been a noble friend in many respects for a long time. He knows that at 17 years of age I said—and I would never resile on it—that if ever I found myself elected to the other place, I hoped that I would be a Member of Parliament like him. I have always admired the positions that the noble Lord takes on many issues, and continue to do so.

Yet the noble Lord knows that a debate has also been under way in his party for a long time about faith schools per se. Indeed, it was the then Education spokesman in another place, Mr Don Foster MP, who said—I believe these were his exact words—that in an ideal world there would be no schools of a religious character. I know that the noble Lord agrees with that proposition, but it is one I fundamentally disagree with. I suppose I should declare an interest as someone who has been educated in faith schools and whose own children have gone through faith schools. I am also the governor of a faith school and I passionately believe that those who wish to opt for that kind of education for themselves or for their children should be free to do so.

There is not the problem, as the noble Lord suggested, of such schools being undersubscribed; they are of course oversubscribed. That is the problem in many parts of the country. I would say this to the noble Baroness, Lady Massey, on the possibility of creating new faith schools. In parts of London there are large faith communities—for instance, of Polish people or people from the African and Asian communities—and in the Borough of Richmond, for instance, a petition has been laid before the council urging the creation of a new faith school. To restrict the opportunity to do that would be to deprive us of something special.

This is an issue that was addressed in 1944, when perhaps the greatest of all social legislation in the last century went through Parliament. I think it would probably have united most of us. The then Catholic Archbishop of Westminster was in the Strangers' Gallery for the Third Reading proceedings on that Bill, when RA Butler brought before the House the provisions that allowed for the state to contribute towards the creation of Catholic schools. The Catholic community of that time, as Members of your Lordships' House will be well aware, was mainly an immigrant community —many were from the west of Ireland, as my late mother was. Those were schools for impoverished communities. Indeed, Archbishop Griffin sent RA Butler a copy of Butler's *Lives of the Saints*, so pleased was he with the resolution of the House in regard to that legislation.

Around 2,500 schools have been created in the years that have passed, mainly though the efforts of those local communities, and they have enriched our

education system. I urge your Lordships not to tamper with the settlements that have been there ever since 1944: that these schools are normally over rather than undersubscribed and that there are already sufficient safeguards in place to ensure that denomination provision is not increased or decreased where it is inappropriate. It is also worth saying, before I conclude, that figures issued recently show that, certainly in the Catholic sector, around one-third of the children in those schools do not come from Catholic backgrounds and there are waiting lists for many of these schools up and down the country. This demonstrates that the ethos of those schools is something that many parents are opting for. That is something that we should celebrate, not in any way try to undermine.

4.15 pm

Lord Avebury: My Lords, I am most grateful to the noble Lord for his kind remarks about his aspiration when he came into the other place, but does he realise that my amendment was not concerned with the creation of new faith schools, but was entirely a matter of the closure of existing schools? I am not attempting to prejudice the decisions that are made by the adjudicator, but simply to create a level playing field when it is a choice between closing a faith school or a non-faith school. Such a decision should not be determined by a requirement that the number of places of a denominational character should be preserved.

Lord Alton of Liverpool: My Lords, I was responding to the two speeches that went before and, of course, the amendments in the name of the noble Baroness, Lady Massey, try to limit the creation of new voluntary-aided schools. I accept what the noble Lord says about his own amendment and I simply say that there are no widespread complaints about the present arrangements. These things are usually best worked out on the ground. In the city of Liverpool, which I know well, one thing I have been very impressed by, and others in your Lordships' House will be able to confirm this, is that in areas where once there was a sectarian and very hostile relationship between different Christian denominations, they have, through local collaboration, come forward with proposals and set up joint schools across the denominations. These things are best left to local determination, a point made earlier by the noble Baroness, Lady Hughes. This is something that is best left well alone because there is no widespread complaint about the present arrangements.

The Lord Bishop of Ripon and Leeds: My Lords, I want to follow the comments of the noble Lord, Lord Alton, about the advantage of leaving such arrangements to the local authority and the faith bodies in the localities. I could quote a recent example in north Yorkshire of the closure of a faith school and the way in which the children from there went to local community schools. It was the right thing to do in that example. The whole arrangement of voluntary-controlled schools is within the maintained system, whereby the faith authorities and the local authorities can work together for the benefit of the children of the area. So I, too, hope, along with the noble Lord, Lord Alton, that we can leave well alone in this area.

We need to stress that VA and VC schools are part of the maintained system. They are opportunities—and Schedule 11 seems to continue to encourage this—for there to be alternatives to moving towards an academy system. These schools remain part of the maintained system and are, therefore, places where the local authority and the faith authorities, usually the churches, can work together. I hope that both the parts which refer to the VA system and those which refer to VC schools can be maintained.

I am particularly concerned about Amendment 73, the third amendment in the name of the noble Baroness, Lady Massey, on voluntary-controlled schools. It seems to me that this is a very effective way, especially in remote rural areas, for authorities to work together to preserve a balance within the system which maintains, but does not increase, the percentage of church school places within a particular area. There are many examples of the ways in which collaboration can take place.

That is not to say that I am in any way in favour of the closure of small rural schools. Where it is possible, small rural schools, whether faith or community schools, can provide immense social and community cohesion within the comparatively small area that they serve, or for a small number of pupils over a sometimes fairly large geographical area. Small rural schools have much to contribute. We need to be able to continue the work between local authorities and faith bodies—particularly, in this instance, the Church of England—to preserve the balance within the system that we have at the moment.

One additional point that I should make about VC schools is that they enable voluntary sites to continue to be put to good use in school provision. If we abandon those sites, one of the problems is that they will either have to be bought from the trustees or, if they are closed altogether, they may revert to the original donor from some years—or, on occasions, a century or so—ago. That would represent a considerable capital loss to the school system. Voluntary-controlled schools are an important part of the way in which we work together for the benefit of the children of our communities and the cohesion of the villages and areas that they serve. I hope that we shall be able to maintain that effective provision through the voluntary control system.

Baroness Turner of Camden: My Lords, I rise briefly to support the amendment tabled by the noble Lord, Lord Avebury. As I have often said in this House, I am a secularist, but this does not mean that I am opposed to people who have religious beliefs or that I want to prevent their demonstrating those beliefs. However, the amendment that has been spoken to by the noble Lord, Lord Avebury, seeks to maintain a balance. Surely it is reasonable that that should happen. I should not like to see a reduction in the number of places for denominational pupils. On the other hand, the guidance proposed in the amendment would,

"not contain any presumption that the proportion of denominational places in the area shall be reduced or increased".

In other words, it would maintain a balance. Surely a balance in this area is what everyone wants. I would expect the Government to regard it as very sensible and to accept the amendment.

Lord Touhig: My Lords, I will not detain the House for long. I was going to say a few words about the amendment of the noble Lord, Lord Avebury, but the noble Lord, Lord Alton, has covered the points that I would have made. In an exchange with the noble Lord, Lord Avebury, the other day I said that those of us of faith and those who are secularists—such as him—have to coexist. We have to try to find ways through the problem about the Isle of Wight, which he has properly highlighted. However, that is perhaps better decided by local people than by putting something in the Bill.

I shall say a few words in response to the three amendments of my noble friend Lady Massey of Darwen. The Bill provides that where a new school is required, the local authority must consider the establishment of an academy or a free school before consideration is given to any other type of school. From the point of view of the Catholic education authorities, that would be a disadvantage. In any entirely new academy or free school, priority can be given to children of faith in relation to only 50 per cent of the places in cases of oversubscription, and that would clearly be a disadvantage. The Bill therefore sought to compensate for and counter that disadvantage by making provision to allow voluntary-aided schools to be established more easily.

The amendment moved by my noble friend would effectively limit the opportunity to establish new voluntary-aided schools. That would be a handicap, especially where there is a demand for them—and there is certainly demand in parts of London where there has been a rapid growth in the Catholic population in recent years. The other disadvantage of my noble friend's amendment is that, as I understand it, if it were part of the Bill, academies and free schools would be the only schools that could be established, and I do not think that that is the policy of our party.

Lord Young of Norwood Green: My Lords, I rise to speak primarily to Amendment 70A, which was moved by my noble friend Lady Hughes of Stretford. I must admit that it is a curious irony that a Government who often proclaim their belief in localism and plurality should seek to impose a prescriptive solution on new schools. I was recently looking at the range of schools that, for instance, the Church of England provides in London. There is a wide variety of about 150 schools; some are academies and some are community schools. Although academies are very much the flavour of the day, they are not—and surely should not be—the only solution. It would be dangerous to assume that there is only one solution.

I should perhaps declare an interest as a governor of my local community primary school, and as someone who participates in the Lords outreach programmes and visits a wide range of schools. One can see successful academies and one can see successful community schools. My noble friend is absolutely right to say that Amendment 70A is not anti-academy by any means. It sends the message that the issue should be left to local determination. I should be very interested to hear the Minister's response.

Lord Hill of Oareford: My Lords, at the heart of the Government's proposals and this debate is the question of how we obtain greater school autonomy, strike the balance between wanting to pursue that objective and raising educational standards, and resolve the tension that can clearly exist between that and localism. Perhaps I may pick up on the point about the Government thinking that there is only one model of provision, involving only free schools and academies. The whole purpose of the policy on free schools is to have as varied a range of types of schools as we can. That is also the case with academies. Studio schools, UTCs and bilingual schools are thereby emerging, many with a lot of local involvement. I recognise that that is slightly different from the point being made about local authority involvement. However, it is not the case that the Government are seeking a one-size-fits-all kind of school provision. We want variety but we are also keen to encourage schools that demonstrate greater autonomy, and that is what lies behind this clause.

We know that results from the academies programme begun by the previous Government provide evidence for this. Research from the National Audit Office last year reported that academies have increased the rate of improvement in GCSE results compared with trends in their predecessor schools. The latest provisional GCSE results data show that sponsored academies are still improving at a faster rate than other maintained schools. In the latest year, they are improving at more than double the rate of other maintained schools.

This evidence began to emerge some time ago and it is fair to say that we are not the first Government to seek to respond to it. We discussed in this House the previous Government's education White Paper in 2005. That White Paper, and the Education and Inspections Act 2006 that followed it, set up the current system for establishing new schools. Again, I think it is fair to say that the system introduced under that legislation was designed to promote more autonomous schools and to reduce the number of new community schools. Therefore, that approach was established by the previous Government, although I accept that we are taking it further with our proposals.

4.30 pm

We have moved to expand the academies programme and develop the free schools programme, and, although there are obviously differences between us over some of the detail, I think that there is an encouragingly broad degree of consensus. I know that in a recent interview with the *Liverpool Daily Post* the shadow Secretary of State, Mr Twigg, indicated that he was not in principle opposed to the kinds of developments that are going forward.

We also know that this consensus extends to many local authorities. Many of them are strong supporters of the Government's vision for a more autonomous school system and they are working closely with the Government to make a reality of that in their communities. They are already playing more of a strategic commissioning role, assessing the needs of their local communities, and identifying and working with free-school sponsors and academy providers, who can respond to those needs. However, it is true that this Government, like the previous one, have found that some local authorities are resistant to the academy model in principle, in spite of what we believe to be strong evidence in their favour. Under the process for establishing

new schools set up following the 2005 White Paper that I have just referred to, despite the fact that the process was designed to promote more autonomous schools, a fifth of the new schools set up have been community schools. That is why, through Clause 36 and Schedule 11, we are seeking to change the process for establishing new schools and to ensure that all local authorities, not just the majority, give precedence to academies and free schools when they think that a new school is needed.

We acknowledge that an academy solution may not be available in every case. That is why Schedule 11 will continue to allow a local authority to hold a competition to invite bids for other types of school. However, they will be able to do so only once the Secretary of State has given his consent. I know that the noble Baroness, Lady Hughes of Stretford, and my noble friend Lady Walmsley are concerned that that approach runs counter to the principle of localism. I understand that argument and accept that there is a tension between localism interpreted in that way and our desire to ensure that all local areas can enjoy the proven benefits of greater school autonomy.

We think that in the vast majority of cases where local authorities need a new school, they will be able to identify suitable academy proposals. In the few cases where they are not able to do so, we think it is important that the Secretary of State has the chance to assist them. In practice, we think that that will be part of a process of discussion between central and local government, and that the requirement for consent will be a formality. However, as I have said, where some local authorities oppose the academy model in principle, we think that there will be a small number of cases where the Secretary of State will need to be able to fall back on a clear statutory lever in the interests of parents and pupils.

I know that noble Lords have expressed some concern that our proposals may make it harder for local authorities to respond swiftly to demand for new school places. I understand that and we have listened to comments that have been made to us by local authorities about the complexity of the existing process. We want to make the new process swifter and less burdensome. Currently, it can take at least 12 months to identify the best proposal for a new school. We want to work with local authorities to streamline this process so that, where a local authority runs a school competition, we can select the successful proposal in less than nine months.

The noble Baroness, Lady Massey, expressed concerns about the other main change made by Schedule 11. As I explained in the letter that I wrote to her last week, to which she referred, the changes that we are making there are meant to be pragmatic to try to reduce unnecessary bureaucracy. They remove the requirement to seek the Secretary of State's consent in certain situations where consent has invariably been given in the past. I know that my noble friend Lady Walmsley highlighted what she felt to be an inconsistency between this change and the introduction of a requirement for the Secretary of State's consent before a local authority could open a competition. The difference is that the former is largely about existing schools and the latter is about new schools. The requirement in this situation for proposals to have the Secretary of State's consent was not intended as a safeguard against unsuitable proposals; that is the role of the statutory process that has to be followed when setting up new schools outside a competition. That process includes consultation with those affected by the proposals and a period in which objections and representations can be made. The local authority or the independent schools adjudicator then take account of all the available information and make an independent decision on whether the proposals can be supplemented and the school established. Our changes to Schedule 11 leave these safeguards in the statutory process in place.

Concerns were raised by my noble friend Lord Avebury. The guidance to which he refers requires that, where a faith school is proposed for closure, consideration is given to the effect on the balance of denominational provision in an area. It goes on to say that approval for closure should not normally be given where it would result in a reduction in the proportion of denominational places, subject to certain exceptions. I recognise that that may sound unbalanced because it does not make the corresponding point about the effect of the closure of schools without a religious character, but I think it reflects the fact that the numbers of denominational places in an area tend to be smaller and so more sensitive to school closure. I recognise the point that he made about the Isle of Wight, which was the point picked up by the noble Lord, Lord Touhig. My officials are developing new guidance to support the Bill. I would be pleased if my noble friend Lord Avebury would contribute to that process by discussing with them the practical implications of some of the points he raised.

A trend towards greater school autonomy has been a common thread running through the education reform led by both Governments in recent years. Clause 36 and Schedule 11 seek to continue that trend as well as to reduce unnecessary bureaucracy. I ask the noble Baroness, Lady Hughes of Stretford, to withdraw her amendment.

Baroness Hughes of Stretford: My Lords, I thank the Minister for his response and noble Lords for their contributions to this debate. In response, I shall touch on some of the points made.

The amendments tabled by the noble Lord, Lord Avebury, and my noble friend Lady Massey and the contributions from the noble Lord, Lord Alton, and the right reverend Prelate relate to the number of places in denominational schools for children who are predominantly—although, as was said, not exclusively—from families of faith. I understand and respect the fact that that is a very important issue for people of faith, as, indeed, it is for those of none. I do not want to go down the route of debating that issue except to acknowledge that I have heard both sides of that debate. The main thrust of the amendment is potentially relevant to all new schools in the future, and therefore to a much wider group of children. I therefore want to focus on the presumption.

Correct me if I am wrong, but I think that I have discerned that the principles of local determination on these matters and of retaining a wide diversity of schools in a locality—a balance, as my noble friend

[Baroness Hughes of Stretford]

Lady Turner said—are shared and supported on both sides of the debate. I therefore hope that both sides will support my amendment as my noble friend Lord Touhig has correctly identified it.

As for the amendments tabled by the noble Baroness, Lady Walmsley, although I very much welcome her support for local involvement in decision-making on local schools, I do not feel that her amendments go far enough. She is not seeking to delete paragraph 6(1) from Schedule 11, which enshrines the presumption that where a new school is needed the local authority,

"must seek proposals for the establishment of an Academy".

That is the core of Clause 36, to which we object. Given the resolution on academies at her party's most recent conference, it is somewhat surprising that the Front Bench here is apparently prepared to support a presumption in favour of academies. I do not support her amendment because it still does not challenge that presumption.

In response to the Minister I would say, as I am sure he would expect, that there is no divide at all between us on the desire to raise standards in schools, to increase opportunities for children—particularly those whose start in life has been more disadvantaged—and to achieve diversity of school provision. I take issue somewhat with his claim that the Government are merely extending the Labour Government's policies on academies. The language used by the current Government may be similar but the scale of their intentions make this policy, and its outcome for the system of education in this country as a whole, qualitatively very different indeed.

I agree as well that, in the beginning of our embarking on the road of academies in disadvantaged areas, some local authorities were resistant to the idea. But things have moved on. The Labour Government in particular demonstrated that, by selective targeting of academies in the most disadvantaged areas, standards in those places and for those children could rise substantially. It is a very different matter for the current Government to propose to enshrine in law a presumption that every new school in the future should be an academy, with community schools only as a last resort.

It is also a very different proposition to say there should be a presumption that every school is able to become an academy regardless of whether it is equipped to handle the greater autonomy that such status brings. Although we on this side support academies in principle, the principles of local determination and a diversity of provision from which parents can choose are more important. We are not convinced by the Government's argument. It is, by anybody's standards, a step too far to enshrine this presumption in law. I wish to test the opinion of the House.

4.42 pm

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4.55 pm

Amendment 70B not moved.

Schedule 11 : Establishment of new schools

Amendments 70C to 73A not moved.

Clause 39 : School inspections: exempt schools

Amendment 74

Moved by ***Lord Hill of Oareford***

74: Clause 39, page 35, line 22, leave out "follows" and insert "set out in subsections (2) to (8)"

Lord Hill of Oareford: My Lords, in Committee, while I think that there was a general acceptance of the idea of focusing inspection more intelligently, a number of concerns were raised about some of the specific provisions in Clause 39. I said that I would reflect on these and report back. In my letter of 14 October to the noble Baroness, Lady Hughes of Stretford, I set out our policy intention and the changes that Ofsted will make to strengthen the arrangements in response to particular concerns that were raised.

The principle of proportionality is already a feature of the current inspection system with more frequent inspections for satisfactory and inadequate schools, and intervals of up to five years for good and outstanding schools. The intention behind Clause 39 is to take this to the next logical step by replacing the requirement for all schools to receive a routine inspection with an approach based on rigorous risk assessment that triggers inspection of outstanding primary and secondary schools where necessary. Clause 41 seeks to apply a similar approach for the inspection of outstanding FE providers.

In Committee, the noble Lord, Lord Hunt of Kings Heath, raised a particular concern that regulations made under the new powers introduced at Clause 39 could extend the categories of schools not requiring routine inspection to cover, for example, all academies or all faith schools without appropriate scrutiny. While we have been very clear about our intentions to use the new power to exempt only outstanding schools, I accept the general point made by the noble Lord, which is why I have tabled Amendments 74 and 75. They provide that any subsequent changes to the first set of regulations made under the new power—a draft of which was shared with the House as indicative regulations in March, exempting outstanding mainstream primary and secondary schools—will require parliamentary approval through the affirmative procedure. Amendments 81 and 82 offer the same commitment in relation to FE providers. I hope that these amendments remove any doubt about the Government's intentions and any concern about a hidden agenda, and provide sensible and effective safeguards.

The noble Lord, Lord Hunt of Kings Heath, was also worried about the performance of some outstanding schools dropping and I understand that concern too. Our response to that point has not been to move away from the principle of greater proportionality but to look again at the question of risk assessment and the triggers that would cause an inspection to take place. Risk assessment already takes account of a range of information, including pupil attainment and progress, attendance, evidence of poor performance gathered through survey visits, warning notices issued by local authorities, views from parents, including through Ofsted's recently launched parent view online questionnaire, and any complaints.

An inspection may occur where, for example, achievement was judged to be less than outstanding and has not improved; where particular groups of pupils are not making good progress; where attendance is significantly below average and not improving; or where Ofsted undertakes a survey visit and identifies concerns. A decision to inspect will also take account of the views of parents, local authorities, funding agencies and others in the local area.

5 pm

Inspection of outstanding schools based on risk assessment has in effect been trialled in the past academic year using flexibility on the timing of inspections that exist within the current arrangements. Ofsted has been visiting only those schools that had been identified as showing signs of potential decline through Ofsted's risk assessment process. The national data for outstanding schools show that around a third drop their inspection grade on re-inspection, a point raised by the noble Lord, Lord Hunt of Kings Heath. But with the 72 schools that Ofsted targeted through risk assessment, two thirds have declined, including 11 that have dropped to "satisfactory" and three that were "inadequate". This shows that Ofsted's approach does effectively identify schools that have slipped back and all those schools have now gone back into the pool for routine inspection. Those 72 schools represent around 2 per cent of all outstanding schools but to provide additional assurance that Ofsted's risk assessment will be sufficiently widely drawn, we have agreed with Her Majesty's Chief Inspector that the risk assessment threshold should be such that it identifies at least 5 per cent of outstanding schools and outstanding further education providers for re-inspection every year. I hope that this provides noble Lords with some reassurance.

In addition, we have also reflected on concerns expressed in Committee about the possible detrimental effect of a change of head teacher. Both we and Her Majesty's Chief Inspector accept that this is a risk factor. We all know how central a head's role is in the ethos and achievement of a school. So we have agreed that while annual risk assessments will normally start three years after the previous inspection, this will be brought forward where there is a change of head teacher. Building on this, Ofsted will trial a new approach whereby HMI will engage directly with the new head teacher to discuss the school's performance and improvement priorities, which is a move that a number of noble Lords will welcome. HMI will also consider the progress of outstanding schools at its regular meetings with local authority directors of children's services. I have also agreed that for outstanding FE providers with leadership changes this matter will be discussed at regular meetings between Ofsted and the funding agencies.

Ofsted has powers to investigate complaints from parents and will continue to use these as a mechanism for determining whether and when to inspect a school. This will play an even more important part in intelligence-gathering in future. Last week Ofsted launched a new system to gather parents' views more generally and outside inspection. Parent View enables parents to register views about their child's school at any time using an online questionnaire. Results will be published

and the information will act as an additional source of intelligence for Ofsted when it undertakes risk assessments of individual schools. The Education Select Committee report published earlier in the year emphasised the importance of using Ofsted surveys to look at excellent practice and spread that through the system. To ensure that we are able to capture best practice, Ofsted will continue to visit outstanding schools and further education providers for those surveys. It is likely that the vast majority of outstanding secondary schools will experience such visits within a five-year period and around a quarter of primary schools will also be visited. As I mentioned before, these visits will also inform Ofsted's risk assessment.

Clauses 39 and 41 build greater proportionality into the inspection arrangements in line with our determination that in future inspection should be targeted where it is needed most and where it will have the greatest impact on provision and standards, but Ofsted will take a cautious approach in relation to risk assessment. The new commitment to inspect more than double the proportion of schools that were identified through risk assessment last year reinforces this. In the interests of the many successful schools and further education providers that are doing well, I ask noble Lords to accept the government amendments which provide additional assurance about the scope of these measures. I beg to move.

Baroness Morgan of Huyton: My Lords, I declare an interest as the chair of Ofsted and in that context shall talk briefly about how Ofsted is addressing the concerns that have been raised about the proposals to reform school inspection arrangements for maintained schools and academies. In doing so, I shall reflect on the attitudes that we have to risk and the reassurance that inspection can offer.

I have been pleased, but obviously not surprised, by the interest in these proposals that noble Lords have taken and the import given to regular and robust inspections of schools. I understand the concerns that were raised in Committee and are still being raised, but I hope that I can put some of our work in context.

I recognise that the approach being proposed is not without risks, and it is important that we develop a mature, shared understanding through a dialogue with the public and the professions about the right frequency and intensity of inspection and regulation. We know that there is irritation about what is perceived to be too frequent inspection of high performing institutions; we know on the other hand that parents would like schools to be inspected all the time, and we have to get that balance right.

After the detailed discussions that took place following Committee, I think that the proposed new inspection arrangements strike this balance by being more proportionate and focusing inspection on those who need it most. They would mean the end of routine inspection for schools that have been judged outstanding but more risk assessment of all outstanding schools and inspection for those where the greatest risks are identified. They would also allow more frequent inspection of schools judged satisfactory, focusing resources where they can contribute to real improvement.

It is important that we keep the risks associated with these proposals in context. Ofsted's evidence shows that a large majority of outstanding schools has continued to be good or outstanding over time. In the last year that it routinely inspected schools, 2009-10, more than 90 per cent of outstanding schools were judged to be outstanding or good when re-inspected.

We have also found that our risk assessment proposals and processes are already working well and seem to be identifying those schools that are slipping back. In 2010-11, Ofsted visited only those outstanding primary and secondary schools that were identified through its current risk assessment procedures. This amounted to 72 inspections, around 2 per cent of all outstanding schools. In two-thirds of those the schools had declined, with 11 being found to be satisfactory and three inadequate, but the rest were good. As noble Lords have heard, Her Majesty's Chief Inspector has agreed to adjust the risk assessment threshold so that in future at least 5 per cent of schools are indentified for inspection through the process. This will mean that about a quarter of outstanding schools will be inspected over the five-year period.

Risk assessments normally commence within three years of the previous inspection. When this was discussed in Committee, there was understandable concern that school performance can suddenly decline, particularly, as we know, when there is a change in leadership, but there are other factors, too.

Of course, any delay in identifying such schools where performance is slipping has a dramatic effect on its pupils. In response, we have agreed to bring forward the risk assessment of schools where there has been a change of head teacher before the three-year point has been reached. We have also agreed to trial a new approach where Her Majesty's inspectors make direct contact with new head teachers as part of the risk assessment to explore the school's performance at that stage and the head teacher's plans for it. As noble Lords have heard already, Ofsted has also introduced a new feedback mechanism, Parent View, which will identify spikes that we would then further investigate. For example, if a sudden spike showed a decline in behaviour or if a concern about leadership was suddenly expressed by parents at that school, that would form part of the jigsaw that informs our risk assessment and our appropriate action.

I appreciate that concern has been expressed in this House about increased risks in relation to safeguarding should there be no routine inspection of schools. There can be no greater issue of concern both here and to parents, carers and schools than the safety of children. However, we should place this risk in context. Improvements in safeguarding in schools have been rapid and widespread in recent years, and nearly all schools now give an appropriately high priority to getting their safeguarding procedures right.

In her commentary on the findings set out in Ofsted's 2009-10 annual report, the previous chief inspector wrote:

"Safeguarding … is an issue addressed not only with increasing sureness by those responsible for keeping children and learners safe, but one felt keenly by those most vulnerable to harm and neglect".

[Baroness Morgan of Huyton]
Parents, carers and children can be reassured that almost all schools now take a careful and responsible approach to their safeguarding arrangements. In outstanding schools, Ofsted has generally found that good practice in safeguarding forms part of the fabric of the school, involving every member of the school community in some way, with a sharp eye on the needs of all pupils, especially the most vulnerable. Indeed, it is worth emphasising how rare it is for any school to be found inadequate solely on the basis of weaknesses in its safeguarding arrangements. In 2009-10, of over 6,000 schools inspected only 26 were judged to be inadequate for issues related solely to safeguarding.

We are not starting from a position of concern, but it is worth keeping in mind that inspection and the threat of it has played an important part in getting us to this position. Ofsted's focus on safeguarding over the past few years has certainly helped to focus minds on the need to take all appropriate steps to guarantee and promote children's safety. That is why Her Majesty's Chief Inspector has agreed to inspect a random sample of outstanding primary and secondary schools as part of a review to ensure that their safeguarding arrangements remain strong, and to share the good practice found by inspectors. Ofsted will use this to determine what further action may be necessary in future.

It should also be kept in mind that safeguarding information is shared with Ofsted by local authorities, whistleblowers in schools and parents where they have concerns. Ofsted will continue to take such information into account as part of its risk assessment procedures.

I know the level of seriousness with which this issue is viewed in the House and I want to be clear that there is no greater issue of concern to Ofsted. I believe that the procedures now outlined should give assurance on this issue to the House, but we will keep them under review. Regulators and inspectorates such as Ofsted are rightly expected to manage risk in a proportionate way. They are expected to protect the public, especially the most vulnerable, from risks that individuals cannot easily manage for themselves. We know that the public expect Ofsted to help protect them, their children and, importantly, other children from poor quality education and care and from harm. However, it can do that effectively with the resources that it has available only if it is able to focus inspection on the right issues and on the schools most in need of improvement. That context is particularly important to this debate.

Baroness Walmsley: My Lords, I was delighted to hear what the noble Baroness, Lady Morgan, was saying about the importance of inspecting safeguarding. When he winds up, will my noble friend confirm what was put to me in a letter from the Secretary of State on 14 October? I raised the issue of safeguarding inspection, and he said that he was intending,

"to ask Ofsted to conduct a thematic review of safeguarding involving a sample of outstanding schools, and to use the outcome of this to inform any further decisions".

I am sure that the noble Baroness, Lady Morgan, and her organisation will be happy to respond to that request from the Secretary of State.

Baroness Hughes of Stretford: My Lords, I welcome the affirmative resolution procedure introduced by Amendment 74, which will mean that Parliament will have to consider any further proposals by the Government to change and particularly to extend the exemption from inspections for any other categories of school. That is a bottom-line issue and I am pleased to see that the Government have brought forward those amendments. However, and we will go on to debate this in the next group, the principle of exempting any public service from the possibility of inspection in the future is a principle that we cannot support. Risk assessment and proportionality is one thing—for a long time it has been the approach adopted by Ofsted and supported, as it has developed, by successive Ministers including myself and my predecessors in the previous Government—but exemption, potentially for ever, even for a school judged to be outstanding is quite another.

Do the Government intend to exempt, for example, excellent hospitals from further inspections? What about excellent nursing homes or care homes for the elderly? I suspect not, because the Health Secretary announced today increases in the inspection of hospitals, including no-notice inspections of which I entirely approve and think there should be more of in relation to schools as well.

I note in the Minister's response to the Committee in his letter to me, which my noble friend Lady Morgan has outlined, the actions that he has agreed Ofsted will take in relation to outstanding schools if this measure is approved. They will try to minimise the dangers—there are dangers, not just to safeguarding but to educational standards—that could arise from the government decision wholly to exempt such schools from inspection.

5.15 pm

I ask the Minister—I think this is crucial—why the exemption measure is necessary. It is perfectly possible to retain the possibility of inspection for outstanding schools but change the risk-based proportionate approach if they wish, as the noble Baroness, Lady Morgan, has outlined. It is not necessary to exempt those schools to move to a lighter-touch or even a more risk-based approach to inspection. It is a fallacy to imply, as the Minister did, that it is necessary to exempt outstanding schools from inspection in order to introduce the different approach that he proposes.

The issue here is not about exemption or not; it is not necessary to exempt in order to have a different approach. This is about message, and it is a very unfortunate message. It is the wrong message to send to schools, children and parents that an outstanding school will be exempt from further inspection, full stop. This will mean that some schools will not ever, or not for many years—unless they are picked up in this lighter-touch proportionate approach—see an inspector. I ask the House: are noble Lords happy with that? If I were a parent, I would not be happy with it, and I do not think parents will be happy with it. It is the wrong message. We should keep all schools in the inspection framework. Yes, we should have a lighter touch for those that are doing well, but we should not exempt them completely. This is completely the wrong way to go.

Lord Hill of Oareford: My Lords, let me respond briefly to the specific point about safeguarding raised by my noble friend Lady Walmsley, which I think the noble Baroness, Lady Morgan of Huyton, alluded to. I can confirm that the thematic survey of safeguarding will take place and will be used to inform the judgments that we make going forward about that important issue.

I turn to the core point made by the noble Baroness, Lady Hughes of Stretford, about the thinking behind the Government's approach. I recognise the points of view that she put across: wanting a more proportionate approach based on having far more data about how schools are doing generally and publishing those so that parents can see the whole time how the school is doing, but having the position that if schools are performing well—delivering what parents want, delivering strong results—we need not make them be inspected in the same way as all other schools.

Baroness Hughes of Stretford: Just while the Minister is on that point, would he concede my main point, which is that it is not necessary to exempt outstanding schools from inspection in law in order to have the different, proportionate approach that he talks about?

Lord Hill of Oareford: The reason why we are making this change and doing it now is because we are putting on a statutory basis the approach that we want. That is why we are doing it. In practice, the vast majority of secondary schools will be inspected through a thematic survey visit over a five-year period. The risk assessment arrangements will trigger inspections. The starting point is that we think it builds on the principle of proportionality that already exists in inspections. With these increased safeguards in place, and I am grateful to noble Lords who have encouraged us to strengthen those and look at this again, we think that it will deliver a proportionate and effective system.

Amendment 74 agreed.

Amendment 75

Moved by ***Lord Hill of Oareford***

75: Clause 39, page 36, line 31, at end insert—

"(9) In section 121 of EA 2005 (parliamentary control of subordinate legislation)—

(a) in subsection (2)(a), after "subsection" insert "(2A) or";

(b) after subsection (2) insert—

"(2A) This subsection applies to regulations under section 5(4A) (power to prescribe schools exempt from inspection), apart from the first regulations to be made under that subsection.

(2B) A statutory instrument which contains (whether alone or with other provisions) regulations to which subsection (2A) applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.""

Amendment 75 agreed.

Amendment 76

Moved by ***Lord Knight of Weymouth***

76: Clause 39, leave out Clause 39

Lord Knight of Weymouth: My Lords, I am moving Amendment 76, which was tabled in the name of my noble friend Lord Hunt of Kings Heath, at his request. The amendment would delete Clause 39, which we have just been debating in respect of the government amendments. As we have heard, the clause amends the current requirement under Section 5 of the Education Act 2005 for the chief inspector to inspect and report on every school. The clause provides for certain schools to be exempt from such inspections in future, as we have heard, subject to necessary regulations being approved by Parliament. I recognise that exempt schools may still be subject to inspections as part of the chief inspector's surveys of general subjects and thematic reviews, but I remain concerned, as does my noble friend Lord Hunt, that this still leaves a potential gap in the inspection regime.

According to the Government, the aim is to introduce greater proportionality to the inspection system for schools and, in particular, to reduce the inspections for outstanding schools. The concerns about this are for two principal reasons. First, the open-ended nature of the clause would allow the Secretary of State to exempt other categories of schools, such as academies or free schools. We all know that Ministers have either been in a state of denial or embarrassed when academies have not done well in their Ofsted inspections. No doubt we will see the same phenomenon with free schools. Will the Minister confirm that the Government have no intention of seeking to exempt academies and free schools en bloc from regular inspections in future?

My second objection is to the principle of exempting outstanding schools per se. This flies in the face of the Government's approach to regulation in other sectors and the evidence is that not all outstanding schools will remain so. Indeed, of the 1,155 schools that have been judged outstanding by Ofsted, on subsequent inspection over 30 per cent had a reduced grading, including 58 that went from the top grade of outstanding to the third grade of satisfactory. Given that, I find it difficult to understand why outstanding schools should be exempted. Perhaps it is because the Government do not want to fund Ofsted to do these extra inspections properly and this is simply a way in which to reduce the cost. If that is the case, I would be delighted if the Minister was frank enough with your Lordships to say so.

The Government apparently believe that risks can be reduced, because Ofsted will develop a risk assessment approach including a basket of indicators that flag up concerns. We have heard described very well by my noble friend Lady Morgan the risk-based approach being undertaken by Ofsted. But because the data that will inform that approach are likely to be gathered a number of years after a school inspection, there is a real risk of a school deteriorating and students suffering for some time before any intervention on that basis is triggered. For example, I would be concerned about the impact of a free school being established in an area where an outstanding school has a catchment area, attracting children who would otherwise enrol into that school, however outstanding it may be, and causing a sudden deterioration just because of a loss of funds.

[Lord Knight of Weymouth]

There are all sorts of scenarios that are not just around a change of leadership. I remind the Minister of the debate that we had on Monday around admissions, when I put it to him that the fundamentals to which the Government have to have regard in a free market-based system of school improvement such as that which they are adopting are fair funding, fair admissions and inspection as a form of accountability. He replied:

"These are the three principles that we need to uphold".—[*Official Report*, 24/10/11; col. 642.]

So he agrees—and yet, as with admissions, he is watering down inspections in the context of moving to a more market-based schools system.

I am grateful to the Government for reflecting on the debate in Committee. As we have heard from the Minister, the Government are now proposing that any move to exempt a category of school will be subject to the affirmative procedure. That is welcome, but, of course, this House only very rarely rejects such legislation. This really is our only chance to decide whether or not we are happy with some schools being exempted from inspection, potentially for ever.

I have also noted the intention to trial the new approach in schools where a new head teacher has been appointed, and the Minister has made it clear that Ofsted will adjust the risk-assessment process so at least 5 per cent of outstanding schools will be inspected each year. As far as it goes, this is welcome too, but it does not go far enough.

I would contrast, as has my noble friend Lady Hughes of Stretford, what the Minister is currently proposing in education with what is happening in other sectors. Let me refer him to the NHS, as she has done. This summer, the health regulator CQC announced it was replacing its light-touch style with an annual inspection of each NHS and independent sector provider. As the CQC says:

"When people's lives and well-being are at stake, the public don't want to hear about light-touch regulation."

That philosophy should surely apply as much to education and the teaching of our children—to the life chances of children—as it does, perhaps, to our death chances in the NHS. What is so different about children that we do not want to regulate and inspect their education? Indeed, let us look at this in a commercial context. Would a big retailer, such as Marks & Spencer not quality-assure its best stores as much as its underperforming stores? I put it to your Lordships that Marks & Spencer would quality-assure every retail outlet that it has.

I find it extraordinary that Mr Gove, the Secretary of State, is seeking to exempt outstanding schools when he was recently so critical of the methodology used by Ofsted to rate outstanding schools. Only five weeks ago, at the National College for School Leadership, he voiced this concern. Yet now his Minister in your Lordships' House, the noble Lord, Lord Hill, is seeking to exempt the very same schools from regular inspections. The public and parents surely have a right to know whether standards are being maintained or not. If the inspection system is to retain its credibility, regular inspections are essential for all schools.

Finally, I would simply say to the Minister, who I am afraid was floundering around about why he needs to proceed with this exemption—he has had to compromise and come up with all the whys and wherefores in making this all right—would it not just be easier to drop this and give way to common sense and have all schools inspected? I beg to move.

Baroness Morris of Yardley: My Lords, I support this amendment. I shall start with what I think is going to be my only line of agreement with the Government on this. To take the attitude that intervention in schools should reflect the risk of schools doing badly, and to say that we should intervene less when schools are successful, is absolutely right. As my noble friend has just said, that is a principle that was followed by the previous Labour Government, so I am with the Minister on that. We should not be constantly going in to excellent schools and getting in the way of them doing an excellent job; that is an absolute principle.

The second absolute principle is that inspection should be universal for all our schools. Does the Minister really think that one visit every five years is going to be a big burden on outstanding schools? One visit by Ofsted inspectors every five years; that is what happens at the moment, that is what the data say.

The reason for drafting this clause perplexes me. I am trying to think what motivates it because, to be honest, I never thought that the Tories would go soft on inspection, and that is what they have done with this clause. They fought hard to put Ofsted in the legislation, they fought hard to put it into schools, they have argued the case with head teachers and teachers, almost all of whom were opposed to inspection when it first started, and the Labour Government did the same. The political parties have been on the same side on this; we have thought that inspection was a necessary part of raising standards. So I am absolutely perplexed why the Tories, of all parties, should go back on this now. This is a principle, and you would have to come forward with some absolutely outstanding reasons why this principle should be broken. That principle is that in a devolved system, more than ever, every school should be inspected. Every parent has the right to know that the school which their child attends should be inspected. Every child should have a right to be reassured that the school which they attend should be inspected. That is an inalienable right and should be a fundamental structure of our school system.

The second question is: is doing that once every five years a terrible burden on schools? I do not think it is. To some extent, that is where the argument finishes. If you believe that those rights should not be given to parents and teachers, vote against this amendment. If you really believe that one inspection every five years is a terrible burden—do not forget that some children will have gone almost right the way through a secondary school in that time while there has never been an inspection, as they will have started in year 7 and might leave in year 11—then vote against this amendment.

I am going to be really helpful to the Minister here. I am going to warn him not to get into a position that I know I got into when I was a Minister. It is a great ministerial habit when you come up with an idea. Listening to the debate, I have to say that when the

Minister responded to my friend Lady Hughes on the previous amendment it was the most troubled that I have heard him in the whole consideration of this Bill. I did not believe that he had convinced himself, let alone the House. What is happening now is that the Government have a policy but they are, in honesty, persuaded by the arguments against it. Rather than withdrawing that policy, they are seeking to put plaster in the holes and rearranging the bricks: "Well, let's have greater risk assessment. Let's talk to the heads when they are new. Let's do this, that or the other". I can tell your Lordships that that is how the camel was invented, rather than the horse.

I remember when we ourselves got into exactly that position. You do not want to backtrack, because this is politics, so you start trying to plaster up the cracks. But what you end up with is so disastrous that in two years' time you are asking, "Why weren't we just brave enough to say that we got that wrong"?. I say to the Minister that he is at that point now. He should take a deep breath and protect himself from having to come to your Lordships' House in two years' time to answer many questions and queries about an inspection system that clearly will not work.

I have two more points to make. I really worry that the Minister may have constructed a terrible bureaucratic tangle in order to get out of the political difficulty that he is in. He will now have an army of Ofsted inspectors doing more risk assessments. They will have to weigh and measure the schools and collect the data. Now they will have to go and talk to every new head when he or she is appointed to a school—perhaps the Minister could tell us how many interviews that is going to be in a year—just to check their plans for that school. The Government would not have to do that if they backed this amendment. From the schools' point of view, we are meant to be freeing them from this terrible burden of one inspection every five years, but what is the Minister putting in its place? He is making them provide more data. He has the local authority checking on them, so that it can refer back to Ofsted. He has the new heads having to talk to Ofsted and he has a third of them having to be inspected every five years. They will not know where they stand. I can assure the Minister that it would be easier for them and less of a burden if he would just say, "Once every five years, and that's it".

My last point is this, and to some extent it is the most important point for me. From the point of view of the Ofsted inspectors, it is crucial that they measure the standards of every single school in this country by the performance of the best. That is absolutely central to effective Ofsted inspection. If you say to your average Ofsted inspector—not the ones doing the one-off thematic reviews—who spends their time going into schools, "Thou shalt not be seeing any outstanding schools", how do they know what outstanding looks like? When they go to the satisfactory school, it might be the best that they have seen for six months and they might think that that is outstanding. To help the Ofsted inspectors, it is crucial that, as part of their job, they see outstanding schools as part of their regular inspections.

To be helpful to the Minister, I think I know why he, or his colleagues—I am sure that it was his colleagues and not him—came up with this terrible idea: it is this idea of having a long list of freedoms which you can grant to schools to prove that the policy of granting freedoms to schools works. We saw it in the debate on admissions on Monday and we have seen it today. These are wrong freedoms, because they are freedoms that answer the political drive of the Government and they stand in the way of raising standards. This is the moment when the decision is made: go on and the camel will have several extra humps in two years' time, I promise the Minister that. I passionately support this amendment, more than anything else in the Bill, and hope that noble Lords, having listened to this debate will vote to preserve universal inspection. I praise the Tories for bringing it in in 1988; I think it would be terrible if they voted to get rid of it now.

Lord Quirk: While the Minister is taking the deep breath that the noble Baroness, Lady Morris, has urged upon him, may I give him an extra couple of minutes of breathing time by saying what a difficult job he is going to have in offsetting the arguments presented by the noble Baroness, Lady Morris, and the noble Lord, Lord Knight? Surely it is the outstanding schools that need to be inspected in order to have reports coming out showing what can be done in state sector, mainstream schools. Once every five years is, as the noble Baroness, Lady Morris, said, nothing compared to the extra bureaucracy which we are threatened with in some kind of compensation for this. I hope that the Minister will bow to the wisdom that has been cast before him this afternoon.

Lord Lucas: My Lords, I add my voice to those who have already spoken. I am greatly saddened by this Government's attitude to inspection, which seems to me to be coloured by too many years in opposition listening to schools complaining about inspection. Indeed, inspection under the previous Government was not generally taking a constructive turn, but then, we had not constructed it in a constructive way ourselves previously. I had hoped that this Government would go back to first principles and ask what inspection is for. If you start by saying that it is to make sure that our children are receiving the best possible education, then you need a system which is much faster to react than the current one. It can take Ofsted three years to pick up that a school is going wrong, because their data are always backward-looking and they always want two years of that before they believe that there is any trend in place. So in the schools that I have seen and known to have gone wrong, it has been the third year or the beginning of the fourth when Ofsted have come to call and by then, a lot of children's educations have been harmed. I would have been looking to produce something which was much faster to react, rather than something which is going to be slower to react.

To pick up the point made by the noble Baroness, Lady Morris of Yardley, and the noble Lord, Lord Quirk, it is essential that inspectors, the people who are seeing a lot of schools, see the very best. The point about the best schools is that they are utterly surprising and jaw-dropping when you see them: you could not believe that what they are doing could be done. When you have seen it, you start to understand how other schools could do it too, but if you have not seen it, you

[LORD LUCAS]
just do not know; you just accept that the ordinary way of doing things is sufficient, that the platitudes that, "We are doing well by our children here" are right, because it is okay by the current average, rather than being anywhere near the potential of the children. When you see the difference that a really good school can make, you understand that there is a long way to go; not that schools are bad at the moment, but that the good schools can be a great deal better than they are. That understanding comes from going round outstanding schools and being able, as the noble Baroness, Lady Morris, said, to set your yardstick on the basis of what you know can be achieved with children like these in a school that really understands how to deal with them.

We do not have that; we have something that goes backwards. We have a decision to remove outstanding schools from the purview of Ofsted. However, things change. I came across a school by chance the other day—Glenthorne in Sutton. It is sprouting all sorts of new initiatives. You can study three A-levels and golf, as well as tennis and football, to a professional standard. It is great to see these initiatives but no one will take a look at them. No one will know whether they are going right or being balanced correctly. It will be three years before anything shows in the figures. However, a good, experienced head, going around six months into the project, would know whether it was going right. To think that you can do this by remote control—that we are looking after the future of our children by stepping back in this way—is a profound misconception. I am afraid I despair of changing the Government's mind at the moment, but give it a year or two, let an outstanding school or two crash, and then we will think about it again.

Baroness Hughes of Stretford: My Lords, I cannot improve on the contributions that we have heard from my noble friends and the noble Lords, Lord Quirk and Lord Lucas. I just want to add a few more points to the debate.

The first is one of principle. I believe strongly that not just the Government but we in this House and the other place are guardians of the public when they use public services. We have to take very seriously the arrangements we make to ensure the safety as well as the standards of those services. Secondly, as we have seen, the possibility of an inspection in any public service is not a guarantee of high standards. However, the certainty of no inspection surely means a huge risk of declining standards and, in this case, a risk to children. Thirdly, our experience in other sectors, particularly in health and social care recently, shows that pulling back too far on inspection has led to serious risk to patients and older people. Fourthly, there is the point that I made in my previous contribution, which, with respect, I do not think the Minister answered fully. Exempting outstanding schools completely is not necessary in order for them to have a qualitatively different inspection regime. We should keep them in the framework of inspection.

My noble friend Lady Morris asked the Minister to take a deep breath and think again about his position and responsibilities. I ask noble Lords also to think from the point of view of a parent of a child at a school, with which they may well be very happy as an outstanding school. However, they would not be happy to know that it would never be inspected again. A further point is that when parents are looking for a school for their children, they look not only at a school's results but on the internet for Ofsted reports. In this instance, a few years down the line there will be no up-to-date Ofsted reports for those parents who are looking for a school to examine. They will not know the difference between the school as it was when it was outstanding and the school as it is further down the line. On this issue we all have a responsibility to consider all the points made, particularly the dangers inherent in this approach, and whether we are happy to support them.

5.45 pm

Baroness Howe of Idlicote: My Lords, I have listened to the whole debate, particularly to the noble Baroness, Lady Morris of Yardley. She completely impressed us all and has certainly convinced me. Until now I wavered a little on this point. It does not make sense for Ofsted not to be involved in the ideal against which other schools and schools in the future should be measured. I hope that the Minister, after the few extra minutes he has been given to breathe by virtue of the intervention of the noble Lord, Lord Quirk, will be able to rethink a little and, above all, get the other place to read what the noble Baroness, Lady Morris, said.

Lord Hill of Oareford: My Lords, I am grateful to the noble Baroness, Lady Morris of Yardley, for her career advice, which I take in good part. I am sure that it was meant in good part. If she sees the humps developing on my back as I respond, she will understand that, camel-like, I must bear the course—I misquote Shakespeare.

The noble Lord, Lord Knight, set out the main points, and I will not speak at length because the substantive response in terms of what the Government are trying to do relates to the principle of proportionality upon which this issue is based. In response to the concerns raised in Committee, we went back, thought again and strengthened the safeguards that have been put in place. However, I recognise that they are not to the satisfaction of all noble Lords.

The noble Lord began with two points. His first concern was to ensure that there was no intention to exempt free schools or academies en bloc. There are two answers to that. The first, which he acknowledged, is that we have made changes so that that could not happen other than through an affirmative order. However, that is not the intention of the Government. I have no desire to exempt all free schools and academies from inspection. That comes back to the point made by the noble Lord on Monday, which he half remembered. He talked about there being three principles—fair funding, fair access and fair inspection. I reiterate my agreement with that because the approach to inspection should be the same for any type of school. However, we would argue that an outstanding academy or mainstream school obviously should be treated in the same way. I would not want there to be exemptions for any types of school.

The noble Lord said that in the past—perhaps speaking from his own experience—Ministers may have looked too favourably on academies because they did not want those schools to be seen to fail because they were seeking to take forward a policy direction. That is not my wish at all. One of the things that we are doing is seeking to increase the pressure on underperforming academies to make sure that we apply that approach to them just as we would to any other school.

The noble Lord asked in passing whether our proposal is driven by money. The matter was raised previously so I shall respond to it. It is a perfectly fair question and the answer is that it is driven by the desire to have a more proportionate approach to inspection and regulation. Money is not the driver.

A point raised a number of times concerned how one picks up best practice. I accept that that is a good and fair question and it was put by the noble Lord, Lord Quirk. Clearly, a flow of new outstanding schools will be coming through routine inspection every year, but the thematic reviews and surveys will also pick up best practice. However—this relates to the point raised by my noble friend Lord Lucas—it is also the case that we are keen to encourage more and more the professional sharing of good practice, and it is spreading. I do not think one needs to argue that an inspection which currently takes place once every five years is the only way to deliver the professional sharing of good practice.

I take the point raised by my noble friend Lord Lucas about the process being faster acting. The current regime leaves five years between inspections, but the combination of the triggers which will kick in earlier will mean that, if there are problems, they will be picked up faster under our new system than under the current one.

In response to the point raised by the noble Baroness, Lady Hughes of Stretford, I do not think that a school would have the certainty of there being no inspection. The much tougher triggers will mean that there will never be that certainty because there are all sorts of way in which an inspection can be brought forward.

I understand the position taken by the noble Lord, Lord Knight, and the noble Baronesses, Lady Hughes of Stretford and Lady Morris of Yardley, who argued their case forcefully and clearly. The difference between us is not about the importance of inspection, the fact that we think parents should have information or that we want to go soft on inspection; at heart, it is that we think it is time to develop the existing approach to proportionate inspection and take it one stage further.

Lord Knight of Weymouth: My Lords, we have had an excellent debate. I am delighted that, having had a busy day, my noble friend Lord Hunt of Kings Heath is now in his place to hear the end of it, given that he instigated it. In many ways, I do not need to add to the debate. As the Minister has just said, there is a difference of opinion. The case was brilliantly put by my noble friend Lady Morris and supported by others on all sides of the House. I think that the argument has been won and I hope that the vote will now be won. I wish to test the opinion of the House.

5.52 pm

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6.03 pm

Clause 40 : School inspections: matters to be covered in Chief Inspector's report

Amendment 76A

Moved by ***Lord Northbourne***

76A: Clause 40, page 36, line 39, at end insert—

"( ) in the case of any school taking in children at compulsory school age, the extent to which such pupils are emotionally, socially and cognitively "school ready" when they join the school;"

Lord Northbourne: My Lords, this relatively modest amendment contains an important principle. It is on that basis that I shall take the time of the House to introduce it. This Bill makes major structural changes to our school system which I support. We need to recognise, however, that for many schools the burden of responsibility for delivering satisfactory educational outcomes will change. Many primary and secondary schools will themselves have to justify their success or failure much more clearly. They will have less opportunity to have the comfort of being able to pass the buck to the local authority. Education and well-being in the early years foundation stage will still remain wholly the responsibility of the local authority. So there will be an educational interface between the local authority and schools when the child reaches the age of five. My amendment is designed to draw attention to the possibility of friction—or, indeed, of unfairness—at that interface.

The amendment would ensure that there will be an objective assessment of school readiness of children as they enter their primary school—whatever kind of school that may be. This assessment could be used to estimate the extent to which any poor outcomes in any particular school arise from the school being overloaded with children who, when they joined the school, were not school-ready and thereby deflecting resources to remedial work when those resources should have been available for teaching.

The criterion for a successful school is to add value to the child's education. We need to be able to identify which institutions are failing to deliver the appropriate amount of added value: is it the schools or is it the early year settings? If we want to achieve this Government's objectives—and I think we probably all believe in them—to improve school outcomes and reduce inequality in our society, it is important that children arrive in school with their foot on the first rung of the educational ladder to be socially, emotionally and cognitively ready to settle in and to learn. Today, alas, we still have far too many children who are not school-ready at the age of five.

I thank the Minister and his department for the help that they have given to me and for the information about the current situation as regards inspection at age five. I have to say that much more is being done than I was aware of when I set down this amendment. Most children are being assessed for progress towards completing the early years foundation stage of the curriculum and those assessments are available to the public.

I do, however, have two serious concerns. The assessments are being made by the providers of the early years foundation services that the child is receiving. They are, therefore, far from impartial. If we are to have a fair assessment of the added value that a school or an early years setting is delivering, the starting point as well as the outcome must be assessed impartially. My second concern is that a small but significant minority of young children today are still not participating in the early years foundation stage programme. This is often because their parents do not want to make contact with the authorities because they are afraid of having their children taken away. Yet these are often the most disadvantaged children of all—often from families designated as hard to reach. They therefore tend to be the children who need most remedial help when they get to school. They are therefore heavy users of school resources. They are the most likely to fail in school, yet they are not taken into consideration in the assessment of the intake of the school.

Is the Minister prepared to give an undertaking that the arrangements for checking each child's school readiness when they join a primary school at five years old will be improved so as to be impartial and include all children joining the school, not just those who have been following the early years foundation stage programme? It would also be comforting if the Minister could confirm that, just as schools may be criticised if they do not give their pupils the educational added value they need, some way will be found to chase up recalcitrant local authorities which are failing to help those children most in need. I beg to move.

The Lord Speaker (Baroness D'Souza): My Lords, I understand that there has been agreement that Amendment 76A shall be grouped with Amendments 77, 78 and 79.

Baroness Walmsley: My Lords, I have Amendment 77 in this group. Before speaking to it, perhaps I may say how right the noble Lord, Lord Northbourne, is to emphasise the importance of the concept of "school ready", which was referred to a number of times by Graham Allen in his important report about early intervention. The noble Lord is also right to point out that some parents will take advantage for their children of the early years provision that the Government make available to them, but others will not. That is why it is very important that their stage of development is properly and professionally assessed as early as possible so that schools can help to bring them on if necessary.

My amendment is very simple. It merely adds the words "and well-being" in the Ofsted framework as laid down in Clause 40. I would prefer to see them in the Bill, but my right honourable friend Michael Gove has assured me, and assured other noble Lords in the letter to the noble Baroness, Lady Hughes, dated 14 October, that he expects Ofsted to inspect children's well-being and accepts the link between children's well-being and their achievement in their school subjects and learning. He has also assured us that Ofsted will use its programme of subject and thematic surveys to look in detail at specific aspects of pupils' personal development. That will certainly pick up issues where children's well-being is not as it should be, perhaps where equalities issues are not as they should be because, of course, children cannot have well-being if they feel discriminated against. I have tabled my amendment in the hope that it will give the Minister the opportunity to confirm those things.

Baroness Benjamin: My Lords, I thank the Minister for the letter dated 14 October that he sent to the noble Baroness, Lady Hughes, in which he gave assurances that Ofsted's inspections will consider how well schools provide the well-being of those to whom equalities issues apply and that equalities issues will underpin the whole approach to inspection and will include all protected groups under the Equality Act 2010. It is

[Baroness Benjamin]
also good to learn that Ofsted will consider how well gaps are narrowing between the performance of different groups of pupils both in the school and nationally because, as we all know, the gap in social mobility is growing wider among certain groups. It is important that schools are judged on the quality of their teaching, which should cater for the range of needs to help all pupils to progress and to inspire them to have high aspirations in a fair and equal way and, as the Minister said in his letter, free from bullying and harassment because of their culture or background, from which so many children in our schools suffer. I am delighted that these issues are being addressed and that the well-being of all children is being taken into consideration.

How can we make sure that equality issues are delivered in schools day in, day out? What measures will be put in place if schools do not comply with these ideals? I ask these questions because just today I received an e-mail from a supply teacher with a complaint from children who feel that their equality issues have been violated in a school during a lesson. They have asked me for help and guidance, so I would like the Minister to help me with my guidance. I will be interested to hear his answer to this question.

Baroness Flather: My Lords, I shall speak to my Amendment 78, which is in this group. It is a very simple amendment to put community cohesion back on the list of items Ofsted will inspect. When I learnt that it had been taken out, I was very perturbed because if schools have responsibility for community cohesion, as I have been told, I believe that it is necessary for Ofsted to look at what they are doing for it. I think that this is more than ever an extremely important area for schools to concentrate on. It is about not racism or equality; it is about the community in which they live and being part of that.

6.15 pm

Now that we have more faith schools not of the faiths that we were used to, free schools and academies, it is more important than ever to have community cohesion in the list for inspection. Without community cohesion, young people will not understand what it is to live in a community. If somebody wishes to ask, "What is community cohesion?", Ofsted has a very good checklist of the issues under that heading. We should not deprive schools or the community of this inspection, or stop children learning about and understanding their own and other communities.

Lord Quirk: My Lords, I rise to speak to Amendment 79. Clause 40 requires the chief inspector to consider a familiar quartet: the spiritual, moral, social and cultural development of pupils. Amendment 79 would insert the word "linguistic". In other words, we would wish the chief inspector to focus upon the child's unique and very precious language faculty, and properly so, because language proficiency is not only essential for the other desiderata in Clause 40, for example social and cultural development, but, more widely, it is a precondition for the whole of education itself.

Many thousands of our children start school linguistically impoverished and hence cognitively impaired. The numbers extend far beyond the unfortunates with pathological problems that require serious intervention by speech and language therapy. These are a tiny unfortunate minority compared with the far greater unfortunates who by reason of family dysfunction or social circumstance have little experience of parental or sibling chatter let alone bedtime stories. They have been denied the rich linguistic exposure that more fortunate children can happily take for granted.

The language faculty depends crucially upon early intervention. Language development is something that has to happen as early as possible, pre-school preferably, as we have just heard in relation to Amendment 76A, moved by my noble friend Lord Northbourne, and as we did on his very first amendment, last week, when the elegant intervention by the noble Lord, Lord Peston, was especially memorable. If serious linguistic deficiency cannot be spotted before school, and if it cannot be spotted at least in the first few terms of primary school, then the consequences are disastrous.

None of this is controversial, and it is indeed in line with Her Majesty's Government's policy. What we are talking about is language development that merely leads to the confident, competent command of English. Surely that is not a lot to ask of an English education, but at present we fall very far short of it. Employers are on record as preferring teenage recruits who learnt their English in Poland, Russia or China, because it is easier for everyone to understand their less sloppy diction and to read their better-formed sentences and clearer handwriting. We could go further. Without giving pupils a sound basis in English, how can we attract far more to go on and learn Spanish, German, even Mandarin? As noble Lords will know, one of the proposers of this amendment, the noble Baroness, Lady Coussins, chairs the all-party group on foreign languages.

Among possible objections to our amendment, let me just mention two. First, adding the word "linguistic" may invite further additions—"mathematical", for example. But language is different, and is genuinely unique. It is the precondition of all else, from the rules of maths to the rules of football. Secondly, it may be objected that the addition of "linguistic" creates a tautology, since it is implicit in "social" and "cultural". We would disagree. Doubtless some degree of social and cultural development need not depend upon language—even, perhaps, enough for inspectorial hurried box-ticking. But inspectors must in our view be required to pause and address language development as an area requiring their separate and specific consideration. Indeed, so far from being superfluous, we would argue that the omission of the word "linguistic" from the clause should be seen as a glaring oversight, so much do its neighbours "social" and "cultural" depend on it as the faculty by which all other development is both inculcated and expressed.

This brings me to a further and final point in urging this amendment. Clause 40, to repeat, requires that the chief inspector "must consider" how pupils are developing in four different respects:

"spiritual, moral, social and cultural".

This is a quartet, of course, that is quite familiar in Ofsted-speak. It has been on Ofsted's agenda for some time. Perhaps the Minister can give us some indication of the success that inspectors have had in grading children according to their development in these four respects. What does the Minister expect the inspector actually to do before ticking, say, the "spiritual" box, thus declaring his satisfaction at the pupil's spiritual development? Then, when he moves on to the box labelled "moral", what does he actually do before ticking that all is well with their moral development?

Now, if the next box were labelled "linguistic", I know—and, more importantly, I know the inspector would know—how a professional assessment in this crucial area would be made. I would have confidence in what a tick meant and know that actual, speedy attention would be given if a tick were withheld.

My point is obvious. Not only is successful development of the language faculty essential for progress in all else that education has to offer, but linguistic development is observable, quantifiable and objectively assessable to a degree that makes the inspectorate's judgment of critical value.

Baroness Warnock: My Lords, I very strongly support the amendment of the noble Lord, Lord Northbourne, as well as the amendment just spoken to by my noble friend Lord Quirk.

Linguistic deprivation is just as serious as any other form of deprivation that a child can suffer. An enormous amount of linguistic knowledge, practice and efficiency is learnt before the age of two or two and a half years. There are a vast number of children whose parents—or whose single parent, very often—are quite unable to supply the kind of stimulus that children essentially need, and from the deprivation of which they really cannot catch up. How can children start learning to read when they hardly have any vocabulary in the language they are supposed to be reading? It seems to me that before school is the crucial time, but as we have heard the most difficult and most needy children are very likely those who do not take advantage of pre-school provision.

Here I must repeat something that I have said a million times before, which is that I believe that the BBC has a huge responsibility for those children who are at home before school, and are not getting out of their home. The BBC should be providing radio programmes with songs and stories which supply what children's parents very often cannot supply, namely constant exposure to language. I was also delighted when a noble Lord—I am afraid I cannot remember which—said at an earlier stage that one of the worst things that has ever been invented is the pushchair which faces away from the parent, so that the parent who is pushing the child cannot speak continuously to the child even before the child has any language to respond in.

I think that this is of enormous importance, and should be in the Bill, more so than all the stuff about spirituality and morality. I entirely agree that that can all go, because we cannot measure it anyway. What cannot go is what can be measured, which is the vocabulary of a child and his ability to communicate and respond to other people talking and singing to him.

Baroness O'Neill of Bengarve: My Lords, I strongly endorse these thoughts. We should not set the inspectorate the task of doing the grand and unachievable rather than the humble and achievable. Language delay is a catastrophe for a child. It is all too common. I am not talking about specific language impairments: they are very serious matters, but that is quite a separate issue. Profound language delay is disabling not just at the early pre-school or reception stage, when it can be picked up, but right through a child's education. Although it is important for children to have moral, spiritual, cultural and social development, without what my noble friend Lord Hennessy has called the chit-chat amendment it is going to be difficult to achieve development in those other areas.

Lord Alton of Liverpool: My Lords, I intend to support my noble friend Lady Flather, but before so doing I would like to support the remarks made my noble friends Lord Quirk and Lord Northbourne. My wife is a speech and language therapist who works with autistic children. Although they fall into the special category that my noble friend Lady O'Neill has just referred to, my wife would emphasise—and I would too, from my own background working in education—that the noble Baroness, Lady Warnock, is right: it is a catastrophe if a child does not have language in place. Earlier today, there was a Question during Question Time about restorative justice. Anyone who goes into any prison and meets some of those who are now in prison because of their participation in the riots earlier this year will know that there is a link with language deficiency and with literacy as well. If we are ever going to get these things right, we will have to spend a lot more time and energy on language, literacy and the early years development that my noble friend Lord Northbourne has made a personal crusade for so long.

I particularly want to speak in favour of the amendment tabled by the noble Baroness, Lady Flather. My reason for doing so is that I drafted the original amendment on community cohesion which was incorporated in the previous education Bill. My noble friend Lord Sutherland and my noble friend the late Lord Dearing were other signatories. We took the amendment to the Government. I personally went to see the noble Lord, Lord Adonis, and I was very pleased when he accepted the amendment, which included that this matter should be inspected by Ofsted. That was put forward 24 hours later, in place of the amendment which we had drafted, as a government amendment, and was accepted in the legislation. I think that the House took the right decision, because it was not singling out one category of schools and saying that they may be a problem with community cohesion; it was saying that all schools have to promote community cohesion. However, that has to be measured, and it is right that it should be measured by Ofsted.

I find it extraordinary that this is being removed at this stage from the legislation. I therefore hope that the Minister can give an undertaking that it will be reviewed. This is too important a question just to leave to one side. That amendment was passed because of concerns that people raised about specific schools where there might be ideological or narrow agendas, and it was to ensure that such things did not happen that this was included in the legislation.

6.30 pm

The Lord Bishop of Ripon and Leeds: My Lords, first, I agree with the noble Baroness, Lady Walmsley, in preferring to have well-being specifically in the Bill in addition to achievement. That would be a much more balanced and appropriate way to look at the whole task of Ofsted and what we are looking for in the Bill. Indeed, it might help some of the other contributions made to this debate in terms of the well-being of a child, which would include their linguistic ability and development. But if the noble Baroness is convinced by the Minister's letter, who am I to dispute that?

My main reason for contributing is to say that I hope that the noble Baroness, Lady Flather, will push Amendment 78 on community cohesion. For many of the reasons put forward by the noble Lord, Lord Alton, this seems to be a key to the whole life and work of our schools, which should be in any Ofsted inspection. One of my tasks which I find most fulfilling and of most value is to be the vice-chair of Leeds City Council's safer and stronger communities board, which seeks to provide community cohesion over the whole life of the city. A key to that work is the contribution made by schools to community cohesion across Leeds. If we are to continue to affirm and assert the need for social cohesion within our country, it is crucial for schools to be included. People from different backgrounds with different abilities and perspectives need to work together in order to have a cohesive society.

I recognise the point that we must not give Ofsted too many individual tasks to pursue. But this is the only one of those tasks which looks beyond the school gates. It is vital that schools do that. I very much hope that the noble Baroness, Lady Flather, will press her amendment. I perhaps even hope that the Government might accept it as a crucial part of how schools should operate within our culture and society.

Baroness Howe of Idlicote: My Lords, all the proposed amendments are more than worthy of acceptance, whether that is in the Bill, by us all or in guidance to schools and communities. They clearly set the sort of society that we are trying to achieve; that is, the big society, community involvement, or whatever one likes to call it. I agree entirely with the points made by my noble friend Lady Flather in speaking to her amendment. Of them all, it perhaps sums up the whole feeling that the school, and the arrangements of the school in what it sets out to achieve for the children, also involves the community, which is a sort of two-way process.

I should like to make one further point at this stage. When we look at all these additional changes and responsibilities that schools will have to cope with as a result of this Bill when it becomes law, one area that perhaps gets less attention is the role of the school governors. They are being asked to play an increasingly important role—I declare my interest as president of the NGA—on well-being and other issues. Whatever the issues are, these are added responsibilities. If I were to add anything, I would include something about the importance of not just management of the school but the whole way in which it operates under its governors. With that, I hope that we will get a favourable response from the Minister and perhaps even an acceptance of something of what has been said to go in the Bill itself. We shall have to wait and see.

Lord Lucas: My Lords, I very much hope that my noble friend will pay attention to the speeches he has heard on Amendment 78. I well remember the debates that led up to and followed the inspired amendment in the name of the noble Lord, Lord Alton, which got us out of some emotional difficulties. It expressed all our intentions well. This Government realise that measuring schools and setting them objectives has an effect on schools, which is why they introduced the EBacc, which is having an effect. Ofsted looks at community cohesion not because we expect Ofsted to go galumphing all over this territory but so that schools know that attention is being paid to whether they do it or not, and that, therefore, it will come within the list of things that they have to do. The noble Lord, Lord Quirk, made some pretty good fun of the provisions in the Bill about social, moral and cultural development, as if there was a way of measuring these things or a tape measure that could be run over them. But having that in the Bill means schools know that this is something they have to do and that, therefore, they have to give time to it and spend money on it. If schools are not given any mind in these sorts of areas, they will start not doing it in the way that they have been not doing foreign languages. Hence, the need to row back on that with some vigour, which I am delighted my right honourable friend is doing. These things matter and these particular words matter. The noble Baroness, Lady Flather, has my total support. I very much hope that in the Minister's consideration of what might be done to improve this Bill, she will focus on those two words.

On the other amendments in the group, I support what the noble Lord, Lord Northbourne, is aiming at. It seems to me that we are moving children between two regimes—that of the social services and that of the school, or the family and the school, whichever may apply. In terms of understanding what is going right and what is going wrong, it is important to make a measurement at the point when a child moves from one to the other so that we know whether the problems of literacy are being generated in the community or though a lack of attention in the school. I am not saying that this is the right place to put it but if we are doing value-added in a school, we should take an initial measure at the beginning and not two years in. A lot of value-added goes on in those two years in a good school. We should be doing that. I very much support the spirit of the amendment.

I also support my noble friend Lady Walmsley in her wish to see well-being included. The Prime Minister has been right to support that as a concept of wide application and it really should find its way into something as central as education. I look forward to the speech of my noble friend the Minister.

Lord Elton: My Lords, I had hoped to speak in support of the noble Lord, Lord Northbourne, but I cannot do so because the debate has taken place in my absence. So I rise only to say in a very plaintive way that I left with a list of groupings which made it clear

that I had time to attend to other business but having attended to the other business, I find that the business I wished to be here for had already been dispatched. I hope that is not going to become a regular feature of our proceedings because it is exceedingly inconvenient.

Baroness Jones of Whitchurch: My Lords, I have listened carefully to the debate. We have a great deal of sympathy with those noble Lords who fear that Ofsted's role is diminishing to concentrate on academic achievement and behaviour at the expense of some of the wider social and personal development issues. As has been pointed out, these have an equal status in the classroom and they are sometimes a necessary precursor to the learning process itself. There is also quite rightly some concern that if these issues are not a key part of the Ofsted inspection regime, they will be given diminished status by teachers. I am sure the Minister will say that this is not the intention but we should be realistic about human nature and the pressures that teachers are under to deliver on so many different fronts. The Ofsted report is an essential guide for parents and schools are desperate to score highly on what they perceive to be the core measures of inspection. It is important that these measures are kept in the legislation.

We support the amendment moved by the noble Baroness, Lady Walmsley, which puts children's well-being at the heart of the school mission. We supported a similar amendment in Grand Committee and we reiterate today that schools should not be simply about academic achievement. Schools should have a responsibility to provide a safe and happy environment where all children can thrive. That should include covering issues such as nutrition, exercise, relationships, respect for each other and tackling low self-esteem. In Committee the Minister, the noble Baroness, Lady Garden, said:

"Ofsted recently commented that well-being will be at the heart of the new framework, because it will require inspectors to consider the full range of experiences for pupils".—[*Official Report*, 20/7/11; col. GC 491]

These themes were repeated in the Minister's letter to my noble friend Lady Hughes. If this is the case and we are all in agreement, I see no reason why the Minister should not accept the amendment moved by the noble Baroness, Lady Walmsley, so that the requirement can appear in the Bill.

In an earlier debate, the noble Lord, Lord Northbourne, made a powerful case for improved early years provision. He has echoed those themes today. He is rightly challenging us to identify the mechanisms that will ensure investment in early years so that every child, when entering school, has a capacity to learn and succeed. Again, these themes were echoed by the noble Lord, Lord Quirk, and other noble Lords. This is particularly significant when we read in the past few days that the Institute for Fiscal Studies calculates a 20 per cent cut in funding of early years provision. We have every sympathy with the position that he is pursuing, although it might be unfair to ask Ofsted to report on how school-ready pupils are on first arrival when the receiving school will not have had much opportunity to influence this. He is in effect making a case for more rigorous independent inspections of early years provision and this we would wholeheartedly support.

Finally, I share the concern of the noble Baroness, Lady Flather, about the removal of social cohesion from the core list of issues to be inspected. She is right to identify that this goes much further than measuring the cultural development of pupils. We are blessed with living in a diverse, multicultural society, but it has its tensions, suspicions and hostilities, and we are not short of volunteers who stoke up conflict at any slight or perceived unfairness. Young people need to understand the roots that have brought us together and the advantages of strong communities living in tolerance. The school's role in the community and its influence as a community leader cannot be underestimated so I hope to hear more details from the Minister about how this is going to be achieved in the curriculum and measured by Ofsted. In the absence of a convincing explanation, we will support the amendment of the noble Baroness, Lady Flather.

I understand Ofsted's concern that it is being asked to measure too many aspects of education. I also understand that at times of limited resources, choices have to be made. But this is about getting the balance right. It is about what parents can expect from their children's education and how we want to shape and nurture the next generation of citizens. I do not think we have the balance right just yet.

6.45 pm

Baroness Garden of Frognal: My Lords, the current reporting areas for school inspections of maintained schools and academies have evolved over the years in a piecemeal way with new requirements being bolted on for the best of reasons but without there being any overall consolidation. Over time the arrangements have become crowded, with inspectors having to make numerous judgments and schools feeling that they have to jump through multiple and sometimes overlapping hoops. Clause 40 consolidates and refocuses the arrangements around core issues related to education in its widest sense, covering pupils' academic and personal development. It specifies four high-level areas that must be reported on; namely, pupils' achievement, the quality of teaching, leadership and management, and pupils' behaviour and safety. It requires inspectors, in reporting on these, to consider pupils' spiritual, moral, social and cultural development and how the school is meeting the needs of the range of pupils. The new approach will mean inspectors spending more time in classrooms, observing teaching, listening to pupils read, and talking to pupils and staff. The space provided in the new framework will mean that inspectors can drill down more effectively into difficult areas. Ofsted has developed, piloted and now published a new draft framework built around these provisions and the proposals have been welcomed by both schools and inspectors. Ofsted is currently training inspectors in the new approach which, subject to the passage of this Bill, will be introduced in January.

The specific terms "well-being" and "community cohesion" in Amendments 77 and 78 are not included in the consolidated provisions set out in Clause 40. But as my noble friend Lady Walmsley pointed out, that does not mean that they are to be absent from the new arrangements. There will be good coverage of these matters but they will be approached in an integrated

[Baroness Garden of Frognal]
way, linked to the core areas and underpinning considerations. This comes across clearly in the draft framework documents that Ofsted published at the end of September which were circulated to Peers in the open letter to the noble Baroness, Lady Hughes, on 14 October. For example, the new arrangements will give prominence to aspects such as behaviour, attendance and pupil safety—all of which are fundamental to well-being. Inspectors will spend more time looking at absence and reasons for this and at how the needs of any pupils who are educated partly off site are addressed. The wider safeguarding of pupils remains a key part of the assessment of leadership and management and noble Lords have rightly emphasised the importance of safeguarding. That also looks at how the school is working in partnership with other schools, external agencies and the community to increase the range and quality of learning opportunities for pupils. Inspectors will be considering pupils' participation in activities to develop their social skills. Inspectors will look at how schools manage safeguarding arrangements, including effective identification of children at risk of harm. They will also conduct case studies looking at the experience of vulnerable pupils, including those with special educational needs, looked-after children or those with mental health needs.

There will also be good coverage of issues related to community cohesion. I can reassure the noble Baroness, Lady Flather, and others who spoke in support of this that inspectors will focus on how well performance gaps are narrowing between different groups of pupils when assessing achievement. They will also look at how teachers ensure that all pupils have equal access and a fair chance to learn in an atmosphere of respect and dignity when assessing behaviour, at how the school helps pupils prepare for life in modern democratic Britain and a global society when addressing leadership, and at the extent to which pupils understand and appreciate the range of different cultures within the school and further afield, as the right reverend Prelate pointed out, as an essential element of preparation for life when considering pupils' spiritual, moral, social and cultural development. This is in the draft evaluation schedule published by Ofsted which is available to all schools and the public, so I can also reassure my noble friend Lord Lucas that all schools will indeed know about it.

My noble friend Lady Benjamin asked how we would ensure that equalities issues were addressed. I reassure her that equalities are at the heart of the inspection system. Under the teaching limb, inspectors will assess the extent to which the needs of all pupils are being met. Under behaviour and safety, inspectors will look at whether all pupils have an equal and fair chance to thrive and learn. On leadership, they will assess whether there is a broad and balanced curriculum that meets the needs of all pupils. Where schools are not meeting the needs of all groups of pupils, this will be reflected in inspectors' judgments about the school. In addition, schools of course have duties under the Equality Act.

Amendment 79 would amend the underpinning requirement for inspectors to consider pupils' spiritual, moral, social and cultural development to add linguistic development. I assure the noble Lord, Lord Quirk, that I agree that linguistic development is highly important. That is reflected both in Ofsted's new approach and in the early years foundation stage. The starting point for assessment of communication, language and literacy development is the early years foundation stage profile assessment, which sets the standards for learning and development from birth to age five. My noble friend the Minister met the noble Lord recently and shared with him the full detail of the assessment that is made on communication and language. I say for the benefit of the House that the assessment includes checking the extent to which children speak clearly and audibly with confidence and control, and show awareness of the listener. It assesses how they use language to imagine and recreate roles and experiences, and how they use talk to organise, sequence and clarify thinking, ideas, feelings and events. It checks that children hear and say sounds and words in the order in which they occur; that they link sounds to letters, naming and sounding the letters of the alphabet; that they use their phonic knowledge to write simple regular words and make phonetically plausible attempts at more complex words; and that they explore and experiment with sounds, words and text, and retell narratives in the correct sequence, drawing on language patterns of stories.

We have recently consulted on revisions to the early years foundation stage. One proposal that we are looking to take forward is a new assessment for all children at age two. This would include personal, social, and communication and language development. The aim is to identify where children are doing well and where additional support may be necessary. The intention is to introduce this from September next year.

I turn to the new inspection system. In evaluating teaching and pupil achievement, inspectors will draw on the EYFS profile assessment in considering how well pupils develop skills in reading, writing and communication, and the extent to which pupils develop the skills to learn for themselves. Inspectors will listen to children reading, with a particular emphasis on weaker readers, and consider opportunities in the curriculum and through interactions with teachers and other adults for pupils to engage in a range of activities—for example, developing an appreciation of theatre and literature.

As the noble Lord has noted previously, social and cultural development presupposes linguistic development. We do not think that it is necessary to identify linguistic development separately from social and cultural development and, more generally, we do not believe that there is a pressing case to add to the legislation in this respect. The phrase "spiritual, moral, social and cultural development" has been with us since the start of Ofsted inspections in the early 1990s and continues to be just as useful and relevant today. To provide some additional assurance, we have agreed with Ofsted that linguistic development will feature explicitly in the training being provided for all inspectors in the coming weeks. We have asked that this important area be considered within the new framework for initial teaching training, on which Ofsted will shortly consult.

Amendment 76A from the noble Lord, Lord Northbourne, would introduce a fifth core area on which Ofsted would be required to report, covering the extent to which pupils of compulsory school age are "school ready" when they join the school. We have already had a useful debate during the first session about the importance of good parenting and support through the first five years of a child's development, so I will not repeat the points that were made on this. However, I fully acknowledge that parents and early years providers have an important role to play in preparing children for school.

School inspection is concerned with holding schools to account for performance in educating their pupils. Inspection reports are therefore focused on the extent to which pupils progress and develop and not on reporting information about aspects of pupil intake, but I assure the noble Lord that inspectors will be interested in pupils' starting points. The evaluation schedule that inspectors will use makes reference to the important assessment that is required to be made by schools under the early years foundation stage profile, the scores that inspectors will check as part of assessing what progress pupils have made at the end of each key stage relative to their starting points. Put simply, inspectors will look at the value that schools add while not lowering their expectations.

I know that the noble Lord is concerned also with what happens in other early years settings, the extent to which they are required to follow the early years foundation stage and how they are held to account. EYFS is mandatory for all early years settings, including reception classes in schools. The EYFS profile is an observational assessment of all children in the summer term of their reception year at school, the academic year in which they turn five. The reception class, of course, is attended by nearly all children. In addition, all children at ages three and four are entitled to 15 hours' free early years education for 38 weeks a year, as are the most disadvantaged children at age two. For the most vulnerable children in need, we have debated previously the duty on local authorities to consider providing services which meet their needs.

The assessments are undertaken by teachers, supported by evidence gathered during the child's time in reception year. It is based on practitioners' ongoing observation and assessments of children's progress in all six areas of learning and development. Parents are given a written report on their children which reflects the judgments of their child's teacher based on the evidence that they and others have gathered. The information is used by the parent and the school to understand the child's development needs and to help plan for their future learning

Data from EYFSP assessments are collected by local authorities, and they provide aggregate data to the department. The department publishes data annually at local authority and national level—these have been sent to the noble Lord. Last week we wrote to the noble Baroness, Lady Howe of Idlicote, detailing the various ways in which we collect information on the early years. We would of course agree with what she said in today's debate about the importance of school governors in the whole pattern of these developments.

On holding local authorities to account, we are making data available about how children are developing at the end of the early years in each local authority area. We would expect schools and parents to use this to challenge the authority on its performance.

Ofsted inspects all early years providers against the EYFS. Where settings fail to meet the EYFS requirements, inspectors take action, instructing improvements as needed. Where improvements are needed, settings are inspected again, more quickly than they would otherwise be.

Finally, local authorities have a duty to provide information, advice and training to childcare providers in order to raise quality. To support this, the Government provide a substantial funding stream through the early intervention grant to enable local authorities to act more strategically and target investment where it will have the greatest impact, with greater flexibility to respond to local needs and to drive reform.

I hope that the noble Lord will agree that the EYFS profile is the right mechanism to provide the information about school readiness that he is seeking, and that the focus in school inspection should continue to be on the progress that pupils are making and the value added by the school.

The provisions in Clause 40 offer a coherent set of high-level reporting areas that have enabled Ofsted to put together a new approach to inspection that will be clearer for schools and inspectors and drive improvement.

I apologise if I have spoken at some length, but many important points have been raised in this debate. I hope that I have offered reassurance about coverage of well-being, community cohesion and linguistic development within the framework documents, and wider assurances about EYFS and how school readiness is monitored. I hope that, with those reassurances, the noble Lord will feel able to withdraw his amendment.

7 pm

Lord Lucas: Before my noble friend sits down, will she agree to write to me saying exactly where community cohesion is dealt with in the draft framework document or the evaluation schedule? I must be reading the words wrong, missing them or misunderstanding how they work.

Baroness Garden of Frognal: I will certainly write to my noble friend.

Lord Northbourne: My Lords, if you were setting up a business to manufacture and sell bicycles and you were going to subcontract the construction of the wheels and maybe the bell to another provider, would you not inspect the wheels and the bell when they came in? Would you rely entirely on the provider to give you the inspection that you need to ensure the quality of the pieces that you were bringing in and putting together and on which your life's work would depend?

The Minister has kindly given us a great deal of detail about what the EYFS does and all the inspections that take place, and it is very exciting that that is happening, but I am looking at it from the point of view of the school in this particular case. I think that

[LORD NORTHBOURNE]
the school needs to have an independent assessment to ensure that the input into the school is up to standard; and if it is not, then extra funding perhaps needs to be provided to enable the school to give special support, rather than having to take money away from its educational work in order to have to pay for restorative work to bring children up to speed.

I will read the reply carefully, but I am sorry to say that I do not honestly think that the Minister has covered the point that I tried to address. That may be my fault for not addressing it sufficiently clearly. Under the circumstances, I certainly do not intend to take the matter any further and I beg leave to withdraw the amendment.

Amendment 76A withdrawn.

Amendment 77 not moved.

Amendment 78

Moved by ***Baroness Flather***

78: Clause 40, page 36, line 43, at end insert—

"( ) the contribution made by the school to community cohesion."

Baroness Flather: I thank the noble Baroness, Lady Gardner, for her comprehensive statement, but I regret very much that I did not get from it the flavour of community cohesion as I perceive it. I perceive it to be cohesion within the community, not just within the school. The school must promote that by teaching children about the community that they are in.

We now have free schools which will be very different from state schools. They will be free schools, so they will need that particular provision even more. We also have faith schools that will definitely be single faith schools, not schools where half the pupils or two-thirds of the pupils are from other faiths. It is extraordinarily important not only that those schools have responsibility for community cohesion but that Ofsted has the responsibility to check them for it. I am not satisfied that that point has been sufficiently accepted, so I wish to test the opinion of the House.

7.03 pm

Division on Amendment 78

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7.17 pm

Amendment 79 not moved.

Amendment 80

Moved by ***Baroness Massey of Darwen***

80: Clause 40, page 37, line 8, at end insert—

"(5C) In reporting under subsection (5), the Chief Inspector's report must consider the wellbeing of the children in the school and, in particular, must report on—

(a) school policies on bullying and healthy eating;

(b) the delivery of citizenship education;

(c) the delivery of personal, social and health education, including sex and relationships education; and

(d) child protection measures.

(5D) In reporting on the matters listed in subsection (5C), the Chief Inspector must take into account the age and stage of development of the pupils.

(5E) The Chief Inspector's report must also consider—

(a) how the delivery of the matters listed in subsection (5C) is coordinated across the school curriculum and in pastoral care; and

(b) how many parents, pupils and members of the wider community are involved in the delivery of the matters listed in subsection (5C)."

Baroness Massey of Darwen: My Lords, Amendment 80 refers again to inspections in schools. It follows seamlessly from the previous discussion. As a former teacher of foreign languages and English, I appreciate the remarks of the noble Lord, Lord Quirk, about linguistics. Of course, community cohesion and safeguarding appear in my amendment. It is focused on the well-being of children; that is surely something that every parent and grandparent wants for their own children, and I speak as both.

The advantage of inspections of any school practice, however frequent, is that they can do two things: they can report on good practice, which can be shared between schools, and they can address poor practice, including teaching weaknesses and the appropriateness of materials. I will come to this shortly.

Let me first summarise the amendment. It is about the chief inspector reporting on school policies on bullying and healthy eating; the delivery of citizenship education; delivery of personal, social and health education including sex and relationship education; and the child protection measures. This should take into account the age of development of pupils, and should involve parents, pupils and members of the wider community. The amendment follows debates that were held last week on exclusion and searching.

Many noble Lords were concerned about a positive ethos being fostered at school. They were concerned about an emphasis on enriching learning experiences in an atmosphere where children can flourish. I believe that schools can help teach children to be good learners, good friends, good parents, and good citizens, and I

[Baroness Massey of Darwen]
believe Ofsted could comment on this. I am aware of school inspection guidance. I am aware of self-evaluation schemes. I am aware that every school is not inspected every year, but having well-being included in the inspection guidance would signal that it is important.

As my noble friend Lady Morgan said earlier, the threat of inspection can improve things even if it is several years ahead. Inspections are now on websites so others can see what good examples there are. I talked to an inspector the other day who was full of praise for a school where there was volunteering with senior citizens, and older pupils were helping with sports clubs for younger children. All this was contributing to pupils' sense of responsibility for others, improving their communication skills and well-being.

I am aware that well-being is a nebulous term, which is why I have tried to divide it into some of the areas that can be inspected. Ofsted is already charged with reporting on schools' spiritual, moral, social and cultural development. There are many other areas that could be included as part of well-being. I could have included physical education, which encourages collaboration, sharing and team spirit, or music, where singing or playing together enhances harmony and understanding of how separate parts blend into a whole. I could have included literature which, whatever the age of the child, encourages exploration of morals, ethics and behaviour, as well as a love of language. All this is about well-being.

Well-being helps children to learn and improves the outcomes referred to by the noble Lord, Lord Northbourne. Children learn best when they feel secure and valued and have clear boundaries for behaviour. Schools are places where children can learn to respect themselves and others. UNICEF's Rights Respecting Schools programme—and I declare an interest as a trustee of UNICEF—has been well evaluated and found to have a positive influence on behaviour and learning outcomes.

I turn briefly to the separate parts of the amendment. I know that the Government are very concerned about bullying. Schools should have a clear policy on this and should ensure that it is implemented. Bullying is a destructive act, for whatever reason—appearance, disability, ethnicity or whatever. It is destructive mainly for the bullied but also for the bully themselves.

On school meals, another policy area, we know about the rising tide of obesity. Schools can help by providing and encouraging healthy, nutritious food. I ask the Minister if the National Healthy School Standard will be preserved.

Let me now touch on citizenship as a part of well-being. Children from a very early age can learn about how democracy works. It is partly about how pupils behave in a classroom. Do they listen to each other? Do they help each other and share? Such skills can be learnt and practised at school. Many schools have elected school councils that comment on discipline and school policies. I have seen them working very well in primary schools.

Personal, social and health education—PSHE—is important. It is sometimes called life skills. Parents of pupils want young people to learn about relationships and about health and keeping safe. This should be appropriate to age and stage of development. PSHE will include topics such as diet, smoking, drugs, exercise and saying no to unwanted pressure from adults or other children. It will include teaching resistance to internet dangers, such as pornography or illegal sales. The Government's concern about sexual consent is an element of this for older pupils.

I met an Ofsted inspector recently who said that PSHE was not taught as a separate lesson anywhere in the curriculum. It was covered across the curriculum and in pastoral care, in assemblies, visits to the school and out-of-school activities. The school ethos was one of respect and co-operation, led by a senior staff group. The staff were aware of the importance of PSHE and a senior teacher co-ordinated it. The inspector said that it was brilliant.

I am aware that there has been a campaign to discredit myself and the noble Baroness, Lady Walmsley, which has made dangerous assumptions about our intentions. I have a letter here from the Christian Institute, circulated to many noble Lords, which states:

"At Report stage there will be votes on amendments to require schools to teach sex education".

This is untrue. A further letter states:

"Amendment 80 would ratchet up the pressure on schools to teach children about matters which they are simply too young to deal with".

Again, that is untrue. As I said earlier, a duty of inspection is to ensure that teaching and materials are suitable for the age and stage of the child. My amendment protects children.

I am aware also that some colleagues will have been the subject of a public letter-writing campaign fuelled by the letter that I have just quoted. One lady wrote to someone saying:

"An Education Bill is being forced through Parliament which would result in compulsory sex education for school children from the age of five years".

Where is this Bill that is being forced through Parliament? Where is the intention? My amendment is about well-being and protecting children. The public have been fed dangerously misleading information, which implies criticism of myself and, to some degree, the noble Baroness, Lady Walmsley. We were not informed that such information was to be sent and it is only by the kindness and concern of other Members of this House that we have sight of it. Incidents such as this letter-writing campaign happen when misinformation is unleashed, and people make what they will of it. It is particularly worrying when a charity is involved.

Never in the time that it has been my honour to serve in your Lordships' House have I known such a sinister and vicious campaign, which has sought to misinform others. Noble Lords will receive hundreds, maybe thousands of letters, taking up their time and energy, and I find this most regrettable. I also deeply regret the fact that it is ironic that the noble Baroness, Lady Walmsley, and myself have been two of the people in this House most concerned for the welfare of children. My own work has included child internet safety and child trafficking. The noble Baroness, Lady Walmsley, has been consistently involved in work on the rights of the child. I am deeply shocked and

offended by this attack on my and the noble Baroness's integrity, and I am very saddened that a colleague on the Benches opposite has also been involved in circulating misinformation to other colleagues. A letter from her states:

"Amendment 80 … would be to encourage the use of the kind of primary school sex education materials which have caused such concern".

This is simply not true. This amendment safeguards children.

I briefly move to child protection, which includes safeguarding. This concerns us all. We have had horrendous examples of children falling through all the nets that can protect them. Problems can sometimes be picked up in school, whether it is physical or other forms of abuse. But there must be mechanisms in place so that a child in difficulty can be spotted and referred for help. Children can be taught how to protect themselves; they also have a right to protection.

The whole school community—here we have community cohesion again—of parents, school governors, agencies in the community, voluntary sector organisations, welfare agencies and outreach work such as sport or volunteering groups all contribute to well-being. Children can be encouraged to get involved in activities outside school, such as clubs and award schemes. Some sports clubs are actually linked to schools. This also is well-being.

Inspection reports can highlight how well-being is encouraged in schools. Such reports can be shared and others can learn of good practice, and they can pick up shortcomings, as I have said. Well-being is a vital aspect of what goes on in homes, schools and communities, and we know it when we see it. Children are entitled to school policies, to education and protection, which enhance and safeguard their well-being. I beg to move.

Baroness Walmsley: I am grateful to the noble Baroness, Lady Gould of Potternewton, and the noble Lord, Lord Layard, for graciously allowing me to speak next, for obvious reasons. Before I get on to the substance of this amendment, I would like to say a few words about the events that have led up to our debate today. As the noble Baroness, Lady Massey, said, the Christian Institute recently sent out a letter in which it claimed that I would be laying an amendment to make PSHE compulsory. As your Lordships see from the Marshalled List, this is not true. It also claimed, in a subsequent letter, that my fictional amendment, and that of the noble Baroness, Lady Massey, which we are now debating, would force schools to teach five year-olds about sex. That is also not true. There have been wicked insinuations that we would want to do something that would harm children and their innocence. The noble Baroness and I have spent our whole parliamentary lives, much of what went before and a lot of what goes on outside, working to promote the well-being of children, and to suggest that we would harm them is outrageous and very un-Christian.

7.30 pm

Not satisfied with this, they have got a whole lot of people to send e-mails and to make phone calls to a number of Peers, including myself, asking us not to vote for teaching five year-olds about sex. Well, since we had no intention of doing so anyway—which a polite inquiry to either of us would have discovered—this is both time-wasting and cruel. Some of the people who made contact were very upset. So we have a so-called Christian organisation telling lies and being both uncharitable and cruel.

Some of the callers mentioned an exhibition of materials, which they claimed would be used in schools while forcing sex education on young children. Of course, the noble Baroness, Lady Massey, and I were not invited to that exhibition in case we asked sharp questions about which schools had used these materials, for which age groups and on which dates. From what I can tell, these materials would have been entirely inappropriate for use with young children. So there has been a very nasty little campaign of misinformation going on. It has even taken in some of your Lordships. I heard one Peer come in and ask, "When are we going to debate sex for five year-olds?". My answer was, "We are not". It is not all right to go around spreading misinformation about the serious work of this House.

I would like us to debate what the noble Baroness is really proposing, rather than what she is not. I think I can be confident in saying that her intention in proposing that Ofsted should inspect how well schools inspect bullying policies, healthy eating, citizenship, PSHE and safeguarding is to make sure that schools do these things well. Apart from citizenship, they are not in the national curriculum, but they do matter. It would not be doing PSHE well for schools to introduce young children to matters that are inappropriate for their age and stage of development, and please note that Amendment 80 says the Chief Inspector, and therefore teachers,

"must take into account the age and stage of development of the pupils",

and how well parents are,

"involved in the delivery of the matters listed".

I would say this is very good practice, which is what we seek to encourage.

I would also point out that the amendment is not just about sex. Why are these people so obsessed with sex? I do wonder who they want their children to get their information from if they are not willing, as many parents are not, to give it to them themselves. Do they want them to get the information from their friends behind the bike shed or from TV, magazines, advertising hoarding, or somewhere else in the world? Or do they want it delivered at the right time, in a sensitive manner by a well-trained teacher? I know which I would choose.

A good PSHE curriculum contains a lot of valuable things that enable children to grow up safe and confident, but it is always the sex and relationships bit that gets people hot under the collar. Note that I say "sex and relationships". Properly delivered SRE does not start at five years old with the mechanics of sex; it starts with the relationships that all children have. It teaches them to understand their relationship with their parents or carers, and to respect the love and responsibility their parents have for them. It teaches them about the importance of friends, and how to be a good friend—we all know how important friends are to children; friends make them happy—and it teaches them to value all their other relationships. When the time is right, it teaches

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them that there are other kinds of beautiful relationship that bring great joy and fulfilment to human beings. What it does not do is stuff sexual information down their throats until they are ready.

Talking of throats, I am please that the noble Baroness, Lady Massey, has included the matter of healthy eating in her amendment because I am concerned that if all schools become academies, as the Government intend, all the work done to ensure high standards of nutrition in school meals will go out of the window because they do not have to adhere to them. If academies are expected and encouraged to admit a lot of children on free school meals, which are paid for by the taxpayer, it is only reasonable to expect that they provide a high standard of nutrition for those and other children. Good food helps children to learn so of course it is relevant to these schools' educational purpose.

I hope that my noble friend the Minister will be able to reassure the House that Ofsted will report on these important matters for those schools that it continues to inspect, and say how he will ensure that all the other schools that are no longer inspected will do them well, too. All these things matter to children and they deserve them to be done well.

Baroness Gould of Potternewton: My Lords—

Lord Hylton: My Lords—

Noble Lords: Cross Bench!

Baroness Gould of Potternewton: My Lords, my name is on the amendment if your Lordships would do me the courtesy of letting me speak. The value of this amendment is that it brings together the different elements of well-being, the interventions schools can make and the inspectorate regime. As the two previous speakers said, it is a great tragedy that such an important amendment has been usurped in this way, and actually been depicted in a completely false light.

I would like to start by quoting from a head teacher in a school in my home town of Brighton and Hove about the advantage of well-being being taught in schools. She says that,

"well-being is central to effective learning: through our in-depth and evidence-based focus on these areas, our practice has really developed and is clearly having a positive impact on the children".

That is what this amendment is about, and that view is actually reinforced by the Government's Healthy Schools toolkit, which says that,

"schools play an important role in supporting the health and well-being of children and young people—and we will make sure that schools have access to evidence of best practice".

Again, that is what this amendment is calling for. This amendment would be a significant factor in providing the necessary framework to improve outcomes for our young people. Crucially, it ensures that the Chief Inspector's report provides the evidence that determines that the outcomes have been achieved; that the school creates an environment of health and well-being; that the teaching is age-appropriate; that the school community has been involved; and that the programme can be sustained by the school.

The well-being of a child underpins the ability of that child to learn, fulfilling their potential, increasing their educational attainment, and improving their life chances. Young people need to be safeguarded against the consequences of risk and the consequences of some of their actions, so they can gain the knowledge and skills they need to be aware, healthy and safe.

The Government in the PSHE review makes all the arguments for the value of PSHE: that there needs to be room in the life of the school for an exploration of wider social issues that contribute to the well-being and engagement of all pupils. It goes on to say that Ofsted stated in 2010 that the weaker areas of provision were sex and relationships, drugs and mental health, and that there was ineffective assessment and tracking of pupils' progress.

Again this amendment will help to overcome those weaknesses, and it should be seen as a package. For instance, citizenship is not only about the structure of our society and where we all fit in, but also about how we behave in our own communities. It is about tolerance and understanding diversity, and very often it is that lack of understanding that can be the cause of bullying in schools and sexual harassment—the latter a subject that many schools fail to recognise. Unwanted sexual contact is often a specific form of abuse that girls suffer routinely, and it really needs to be monitored.

This brings me to PSHE and SRE. The commitment by the Government to teaching sexual consent has to be welcomed, but it cannot be dissociated from the questions of how to avoid risk and the dangers of alcohol and drug-taking, which requires specific education that gives young people self-esteem and the confidence to be in control. Yet self-esteem so often relates to image. We have to empower young people to be media-literate and to be able to cope with and challenge the bombardment of inappropriate images which often create bad eating habits.

To be effective, the interrelationship requires a level of co-ordination across the school to have a real impact on the well-being of the child. Health and well-being should be supported by the whole school community, with a well-being school group whose membership should include every aspect of the school: teachers, governors, students, the school nurse, the school cook, parents and carers. We can then ensure high-quality Ofsted-inspected lessons that range from personal finance to awareness of and sensitivity to diverse faiths and cultural beliefs, understanding discrimination, the wrongness of prejudice and bullying, the consequences of risky sex, drugs and alcohol misuse, and the importance of staying healthy. I genuinely believe that not to do so is failing this generation of children and young people. The Government, quite rightly, want young people to be responsible members of society. That can be achieved if they are prepared to provide the necessary framework to make it happen. This amendment is that framework.

Lord Layard: My Lords, this is a most important amendment because when surveys are done asking parents what they want most from a school, the majority say it is that their children should be happy. If this is so, it should surely be a major objective for our schools—it is as simple as that. Yet the existing pressures

on our schools are in a very different direction and we are in danger of turning our schools into nothing much more than exam factories. We must surely do something drastic to reassert the importance of the development of character and of the personal well-being of children within the school. This is a matter not of either/or but of both/and: exams and academic achievement are extremely important, but so too is well-being.

On top of that, as the noble Baroness, Lady Walmsley, pointed out earlier, there is very strong evidence that happier children do better in terms of academic achievement. How can we get the rebalancing? I would be surprised if there were anybody in this House who did not believe that some rebalancing was needed in the objectives of our schools. I assume that we all feel that. The only way we can do that is by incentives, and the reality is that schools do what they think Ofsted wants them to do—it is as simple as that. Surely, Ofsted should be reporting on the ways in which schools are promoting the well-being of the pupils as well as the other objectives on which they already report. Should they not be reporting on what parents want for their children? If this is one of the things that parents most want for their children, if should surely be a major feature of Ofsted's reports. Parents want their children to develop as rounded people who are learning not just how to earn a living but how to live.

In this year of youth riots, I find it extraordinary that the Government cannot add pupil well-being to the priorities for Ofsted in Clause 40. We have been told of a reassuring letter from the Secretary of State, but he is just one Secretary of State. We are debating legislation, and it is not enough to have that reassuring letter; it has to be in the Bill. If it cannot be within Clause 40, which apparently it cannot, I urge the Government to find some way of having this ancillary sanction that strengthens the rebalancing in the direction in which I think all your Lordships would like to see movement.

7.45 pm

Lord Hylton: My Lords, after four speeches in favour of Amendment 80, the amendment still appears both overprescriptive and unnecessary. I say "unnecessary" in the light of the proposed new subsection (5B)(a) to the 2005 Act, which appears at the top of page 37 of the Bill. It lists,

"spiritual, moral, social and cultural development of pupils".

As if that were not enough, proposed new subsection (5B)(b) talks about,

"the needs of the range of pupils",

in the school. In addition, the chief inspector and all the other Ofsted inspectors will have to take account of the guidance already issued by the Secretary of State in July 2000. Finally, if this amendment were to be accepted, it would seem to fly completely in the face of the policy of localism quite rightly adopted by this Government.

The Lord Bishop of Ripon and Leeds: My Lords, I speak with a certain degree of trepidation, not least because in one of the briefings that I received about tonight's debate there was the suggestion that Bishops might like to keep their heads down on this amendment. I have no intention of doing that and while I have no responsibility for the Christian Institute, I want to apologise for any errors or false accusations made in the name of Christianity. I also want to affirm, as clearly as I possibly can, the enormous contributions made by the noble Baronesses, Lady Massey and Lady Walmsley, to the interests of children in successive debates within this House. I am grateful for all that they have done in the cause of children here.

Perhaps I might ask the Government Front Bench whether they would affirm, in summarising, that nothing in Clause 40 or in the noble Baroness's amendment could possibly alter the law so as to make sex education compulsory for anyone, whether that child is five or at any other age—and that if somebody were to desire that, it would involve new statutory provision and a quite separate procedure to that which we are involved with today.

That said, I welcome and have considerable sympathy for the propositions which the noble Baroness, Lady Massey, has put before us. I am particularly concerned with bullying. It seems to me that although it is inevitably very difficult to get any sort of figures in this area, bullying is not obviously decreasing within our schools. That is one reason why I was so enthusiastic a few moments ago to affirm the importance of social cohesion, and why I am grateful to the Government for the way in which they have continued to stress social cohesion—even if they are not prepared to have it in the Bill. Bullying can be extraordinarily insidious in the life of a school. I have been involved in enough instances and discussions, previously as a governor and with some responsibility for schools within my own patch, to know how dangerous bullying can be and what a need there is within schools, which on the whole do an excellent job in seeking to ensure that bullying does not happen. A number of times this afternoon, however, we have spoken of the way in which things can develop in a school, without anyone intending them to and sometimes without people noticing. I hope that the framework that has been referred to on a number of occasions makes it very clear that Ofsted inspectors need to be alert to the possibility that bullying is developing within a school.

I welcome the stress here on personal, social and health education. This is crucial to the development of young people, whether it is done formally, through PSHE classes, or through the whole ethos and being of the school, in the way that the noble Baroness, Lady Massey, described earlier. I, too, bring examples of PSHE being integral to the whole life of the school, so that through assembly, through behaviour in the playground and through the whole way in which staff, governors and students operate and relate to each other in the school, PSHE is continually invoked and spread among the members of the school.

I am pleased that the reference to PSHE in the amendment in the name of the noble Baroness, Lady Massey, stresses the need for it to be appropriate to the age and stage of development of pupils. The noble Baroness, Lady Walmsley, also made that point strongly. If we were to pass this amendment, that would be one way of indicating that we believe that it is part of the

[The Lord Bishop of Ripon and Leeds]
task of schools, therefore of Ofsted, to deal with inappropriate sex education literature in the case of young children. I sympathise with the view that we are getting an overprescriptive, long list for Ofsted through the amendments we are exploring. That may be so, but these four areas are crucial to the life of schools and I trust that, whether or not we go with this amendment, they will all be part of the work of Ofsted and, more importantly, of the work of all the schools in our country.

Lord Eden of Winton: My Lords, the speech by the noble Baroness in moving the amendment gave much reassurance to many in this place who may have been overwhelmed by some of the correspondence that we have been receiving. I am extremely sorry that both she and the noble Baroness, Lady Walmsley, have been subject to abuse on the grounds that they have been apparently promoting activities in schools, in the teaching of the classroom, which have no place there, or should not be there. The fact that we have been receiving so many letters is an indication of the widespread distress that has come about as a result of what has been said. Therefore, I hope that the Minister, in replying to the debate, will make certain matters very clear indeed. What needs to be made very straightforwardly clear is that there is no intention at all of forcing the teaching of sex education in primary schools for children of the age of five upwards. That would be very wrong indeed. Having seen some of the material that has been put about that is apparently available in schools, I can say that it is totally inappropriate for young children.

The trouble with teachers, or well wishers, trying to embrace a subject of such sensitivity is that they become too explicit and nothing is left to any imagination at all. Worse still, in some of the documentation that I have seen, children are actually encouraged to experiment and to find out what they might enjoy. That is insane. We really cannot tolerate that sort of thing and I hope that my noble friend will make it abundantly clear that this is something that he and his colleagues in Government equally will not tolerate. I have had many years of being able to observe children in school, having been the owner, a long time ago, of a private preparatory school, and I know that in some cases—very rarely—a child is very susceptible and vulnerable and open to all matters of persuasion and influence. However, the majority—I can say this with some certainty—are not.

Children, small children in particular, are extraordinarily resilient and they have a facility to bypass the sorts of issues and experiences that trouble older people. They can absorb them. They are, after all, at an early age, on a journey on a voyage of discovery. They are learning something new every day, they see things every day that are either exciting or alarming and they can overcome issues of distress and anxiety very quickly, on the whole. I generalise, I know; of course, there are exceptions. I very much hope, therefore, that we will not try to force feed sex education to children in our schools, because that would be totally wrong and I know from what has been said that neither the noble Baroness, Lady Walmsley, nor the noble Baroness, Lady Massey, have any intention of doing that. In fact, I find their amendment wholly unexceptional, albeit I do not think it is right to have it in the Bill. The inspectors, as has been said, should not have all this detailed material put in front of them; there are issues that need to be taken into account, but I do not think that it should be in legislation. However, I find their objective in stating these various points to be totally praiseworthy and I thank them very much for having brought these issues to the attention of this House.

Lord Hill of Oareford: My Lords, it may be for the convenience of the House to be clear—since I know that many noble Lords want to speak, since I do not want any hares, or anything else, to get running, and since we should debate this amendment on its merits, as the noble Baroness, Lady Massey, said at the beginning—that the Government do not have any proposals to bring forward or change any legislation in the context of sex education. I hope that that will help to speed up our debate.

Baroness Howarth of Breckland: My Lords, I want to engage in a discussion about the actual amendment and the issues that the noble Baroness, Lady Massey, more broadly raises, rather than getting into a debate that we said we were not going to have about sex education for the under-fives. I support the thrust of this amendment, in that it is about the kind of ethos that we want our children to be brought up in. I know that some noble Lords think that it is overprescriptive and that there are other ways of getting this into the regulations, the legislation or the way that Ofsted inspect, but it is crucial that this ethos is through schools.

Noble Lords will know that I spent many years setting up and establishing Childline. I spent the years I was not doing that working with children who are severely deprived or have been seriously sexually abused. I will come to that in a moment. These children are not a small minority; there is quite a sizable group of children who do not have the benefit of good, middle-class families—indeed, some families that are middle class have extraordinary difficulties, as any parent who has faced having children who are into drug or alcohol abuse will know. The one important issue for all these children is that the school can make a difference.

I am involved with a group of children at the moment who have all had extraordinarily difficult backgrounds. They have been before the court either because their parents are splitting up or because they have come into care. The one thing that has made a difference to those children is their school. They are all doing well. They have the sort of starred grades at GCSE that I could only have dreamt of. They are doing well because their schools have focused on their well-being.

8 pm

That is why I wish the Minister and the Government would not set their minds against using the word "well-being". After all, I gather that the Government are looking at what makes up well-being; there is a whole piece of work that tries to analyse the elements. The noble Lord, Lord Layard, was right when he said that it was something to do with happiness, but I do not think we are supposed to encourage children to be happy in schools these days. As the right reverend

Prelate pointed out, one of the main elements is the prevention of bullying, which was one of the issues that Childline dealt with most. It impedes learning substantially. All the research on bullying shows that you will not learn if you have that impediment.

I know that Ofsted has child protection very high on its list because in another capacity I have been relentlessly inspected on it. I am very grateful for that; it keeps the standards up. It illustrates that having that inspection keeps those standards moving forward. When you think that you are doing well, that inspection will tell you where you are failing. That is why I have some real anxieties about schools not being inspected on their child protection measures.

I was intrigued at Question Time today when we were talking about a register of electors becoming voluntary. I tried to get to my feet but did not manage it. If we are to have a voluntary register of electors, it is even more essential that we deliver good citizenship training. Only if children know that they have to register, and about voting, will they become engaged in our democracy. Therefore, I am also very keen on that.

On child protection and sex education, it is absolutely crucial that children learn enough to protect themselves. If you had talked to as many children as I have who have been subject to serious grooming and abuse, in which they had no understanding of what was happening to them, you would understand that children should learn in an appropriate way—I am all for being appropriate—that that is not the kind of relationship that they should be engaged in. I just wish my colleagues would talk about relationships and sex, rather than sex and relationships. What matters is the relationship and the child understanding that relationship.

I do not want to delay the House any longer; I know that we have been going on for a long time. However, I hope that the Minister and his colleagues will find some way of ensuring that these elements, which make a great difference to how children learn, can be included. He has heard me say time and again that unless a child has a secure environment, either at home or in school—where it can be made up if it is not there at home—he or she will not learn. All the research on issues to do with thriving shows it. That is what we are about: getting children a good education and making them happy.

Baroness O'Cathain: My Lords, I wish to speak against the amendment for two reasons. First, I am concerned that, as has already been mentioned, it will add to the range of issues that already exist for assessment by school inspectors. In Clause 40, proposed new subsection (5A) indicates that Ofsted must focus on,

"the achievement of pupils at the school",

and so on. I will not read it because we do not have the time but I refer to new paragraphs (a), (b), (c) and (d). The noble Lord, Lord Hylton, drew our attention to the fact that Ofsted must also consider the overarching framework, encompassing,

"the spiritual, moral, social and cultural development of pupils at the school".

The same proposed new subsection also expects schools to provide for a,

"range of pupils at the school, and in particular … pupils who have a disability … and … pupils who have special educational needs".

That is all in the Bill. It is all good and I am sure nobody would disagree with any of it.

My second reason for opposing the amendment is that, according to the amendment, it would require Ofsted to assess sex and relationships education in every state primary school. This is strange because, until now, primary schools have not been required to teach sex and relationships education. It is not a statutory national curriculum subject for primary schools. However, the amendment refers to all state schools, which encompasses primary schools.

I have a seriously worrying concern. Even now local councils and other public bodies are promoting wholly unsuitable resources for primary schoolchildren. At least, I take it that they are primary schoolchildren because the materials say that they are suitable from the age of five and a half. To my mind, that means primary schoolchildren. These materials are often recommended by the Sex Education Forum. Many noble Lords have already said that they have seen excerpts from this material. I have received e-mails reporting that where such material has been used, the children have been traumatised. Amendment 80 does not directly make sex and relationships education a national curriculum subject; it takes a different approach. Instead, it requires Ofsted inspectors to report on the delivery of PSHE, including sex and relationships education.

The amendment will apply unfair pressure to primary schools. Conscientious teachers and governors may feel under pressure to teach sex education when they would otherwise judge that it was not in the interests of their pupils. Primary schools will obviously fear being marked down in their Ofsted report if they are not using materials recommended by influential bodies such as the Sex Education Forum. How can they know—

Baroness Massey of Darwen: My Lords—

Baroness O'Cathain: Please let me finish my argument. How can they know what view a particular inspector will take? The amendment refers to assessing,

"the age and stage of development of the pupils",

but is that practical for Ofsted in this contentious area? With everything else that is involved in an inspection, how can inspectors closely examine the sex education resources of any individual school? At present, local school governors and head teachers are responsible for making such decisions; they should be allowed to continue to do so.

I note that Amendment 80 would require Ofsted to report on how many parents are involved in the delivery of sex and relationships education but this is not the same as consulting parents as a whole. We genuinely need to empower parents. The government guidance issued in 2000 strongly advocates consultation with parents, yet all too often this does not occur. Yesterday there was a debate in the other place, in Westminster Hall; I recommend reading Commons *Hansard*, columns 40 to 41WH, in which a lot of disquiet is expressed about this. Parents are busy people and trust schools to get on with teaching. However, many of them are unfamiliar with the sort of sex education resources being used. They need to be given a legal

[Baroness O'Cathain]
right to be consulted and to view resources in advance. This should not just be in guidance—it should be a legal right. In the mean time, this amendment is definitely a step in the wrong direction.

Baroness Massey of Darwen: Could I make two comments? First, would the noble Baroness agree with me that school governors have a significant role in overseeing teaching materials? Secondly, would she also agree that school inspections would protect children and prevent the materials that she describes getting into and being used in schools? That is the purpose of my amendment.

Baroness O'Cathain: I am very glad that the noble Baroness has said that. On the first point, I know quite a few school governors who will not have the time to look at these things in depth, so I am not sure that we could guarantee that some of these materials will not pass them by. On the second point, we know how infrequently Ofsted carries out the inspections in some of these areas so I would not want to leave it to that. There should be a legal requirement for parents to be able to see those materials.

Lord Clarke of Hampstead: My Lords, I hope that, at this late hour, the Government will firmly reject this amendment. I have no reason to quarrel with the integrity of the people who have proposed it, some of whom I have known for many years. I believe that they are blessed with the intelligence to put forward what they think is the right thing. Like wider roads, stronger beer, motherhood and apple pie, you could say snap to most of the amendment. What has been said about bullying and civic learning is absolutely clear. However, I have been here long enough to know that when someone says that something should be included in a Bill you have to be careful.

The amendment is actually saying that a school inspector "must", not "could" look at the type of school and what its policies are. That is where we have a problem. There will be some schools that do not have a policy on the subject that has exercised us for most of this debate. Most schools make up their minds through the governors and parents, or through whatever consultation they have, and they make their decisions. If the amendment is carried, the chief inspector must ask those schools the questions and will have to report on them. In most areas the report would be clear.

The right reverend Prelate the Bishop of Ripon and Leeds referred to the Government's intention. However, it was only two days ago that the Minister was able to tell the House, at col. 543 of the *Official Report*, that the Government had no intention of changing the policy on sex education. I thought to myself, "That is good. There is no need for the proposed new paragraph because we have heard a clear statement from the Government". I welcomed that at the time.

I am not influenced by hundreds of letters. I was not influenced by them on fox hunting and all the other issues that attract a deluge of correspondence. I admit that I did not receive much teaching because I left school at the age of 14, but I was taught to think for myself. It is wrong to put words in the Bill that could force people in certain circumstances to do things that they do not want to do. Therefore, in the event of a Division, I shall vote against the amendment—although reluctantly, because I recognise the integrity of those who are proposing it.

Lord Lingfield: My Lords, all of us sympathise with the noble Baroness, Lady Massey, regarding the appalling letters she and others of us have received from time to time and which completely miss the point of this debate. I do not think that any Member of your Lordships' House would think that a school ought not to have clear policies on bullying, the aspects of life dealt with in citizenship education, personal social, health and sex education, and even healthy eating. However, where I part company with the noble Baroness is that if these issues are a matter for close inspection by Ofsted, then the global views of that organisation—it has global views, although that may alter—become written in stone. Once these policies are apparent, schools often are scared to deviate in any way from what they come to believe is the letter of the law. The grades given by Ofsted to schools are very talismanic. The school is outstanding, satisfactory or merely good. Heads and governors become hugely anxious that an Ofsted report will say something detrimental and, if the buzz from other local schools already inspected is that it is important to tick the right boxes by adopting certain policies on sex education, certain aspects of discipline, citizenship education or even on the consumption of hamburgers and chips, sadly they will have those policies. We have seen far too much evidence of that.

We should leave these decisions entirely to individual schools. We should not want to take from the hands of heads, teachers and governors the right to make professional decisions in these areas of school life. Of course, every one of the items mentioned by the noble Baroness, Lady Massey, in her amendment is absolutely important, but we should trust the staff on the spot to deal with them and not impose upon the staff, as inevitably this amendment would, an Ofsted view—and that, sadly, means a government view—about these matters.

Professional teachers and their governors are best equipped to know of the appropriateness of, say, certain aspects of sex education, certain specifics for bullying, and dietary needs in their own schools, and it is the whole thrust of the coalition's schools policy that schools should be free to take the decisions that the situation demands. I ought to add that Ofsted entirely lost its way by trying to inspect—and, therefore, inevitably setting into concrete—so many areas of school life, with something like two dozen criteria. I welcome the Government's new view that schools should concentrate broadly on teaching, learning, discipline and leadership. If you get those right, everything else falls into place.

I should like to leave noble Lords with one thought. A paragraph or two that is passed by your Lordships can quite literally lead to 1,000 pages of bumph for an individual school. That is true. It is not necessary for Ofsted to inspect all these matters. I therefore oppose the amendment.

8.15 pm

Baroness Northover: My Lords, I remind noble Lords that we are now on Report. We should not be exploring in enormous detail issues that were looked at in Committee. We should have just the distillation of where we have got to on this matter. I also remind noble Lords that we have some very important business to consider following this debate. I therefore hope that we can expedite things and reach a conclusion.

Lord Elton: Perhaps I may distil what my noble friend has just said with the Latin phrase—"expressio unius est exclusio alterius": if you have a list, the things that are in it matter and, by inference, the things that are not in it do not matter. Lists are very dangerous things.

Perhaps I may distil a parent's view on the particular aspect of the amendment on which your Lordships have chosen to concentrate. I think that the parent has the best idea of when a child is ready for the various stages of his or her understanding of sex, and the best way is to answer truthfully every question when it is asked and at the age at which it is asked—sometimes wrapped up a little. I do think—and your Lordships have generally expressed a view—that to teach advanced sex, if one may call it that, in primary school is entirely inappropriate. I add my name to the list of those who admire greatly what the noble Baroness, Lady Massey, has done in Parliament for young people over many years, and I have been rather feeble in supporting her. However, what she was not asked to do was a demonstration of the material that is not only available but recommended to be used in classrooms; and recommended not only by non-government bodies but by local authorities, sometimes at an age less even than that recommended by the publisher. It was hair-raising. I hope your Lordships will understand that for that reason anything that tends to open the door to that is to be resisted.

The noble Lord, Lord Clarke of Hampstead, put it succinctly—he distilled it. He said that the inference in paragraph (c) of proposed new subsection (5C) is that this subject should be taught in all schools. It is for that reason and with great reluctance that I oppose the amendment. Its intention is good and if it could be tweaked at Third Reading to exclude that inference, I would be friendly to it.

Baroness Crawley: My Lords, I rise in support of my noble friends in their amendment and acknowledge their tenacity in pursuing these important and sensitive matters. It is a welcome opportunity for me to leave the substitutes' bench, even for a brief period, in the passage of the Bill and to take part in this significant debate. A colleague said that timely substitution can often win matches. However, looking at our recent voting form, I am not going to hold out too much hope.

In Amendment 80, my noble friends Lady Massey of Darwen, Lady Gould of Potternewton and Lord Layard have called on the chief inspector to report on school policies on bullying, healthy eating, the delivery of citizenship education and the delivery of personal, social and health education, including sex and relationships education. In proposed new subsection (5D) in their amendment, they say:

> "In reporting on the matters listed … the Chief Inspector must take into account the age and stage of development of the pupils".

That is very important for us to remember in the context of our debate tonight. There is no question in the amendment of any compulsion for inappropriately aged children.

Education for Life, with a capital "L", is crucial in our modern, complex, choice-led, resource-scarce society, but I know that the force of my noble friends' arguments will not be lost on the Minister, who carries his brief with enthusiasm and compassion. To quote the noble Baroness, Lady Walmsley, in Committee:

> "Children may not go on to get first-class degrees but they will all have families, relationships, friends, personal finances, responsibility for their own health and safety … and jobs".—[*Official Report*, 13/7/11; col. GC 344.]

Also in Committee, my noble friend Lord Layard quoted, at cols. GC 349 and 350, some revealing international evidence that personal, social and health education assisted children in their academic achievements. He said that it was not a case of either life skills or academic attainment but of both. Many noble Lords around the House are convinced by evidence such as this, by what parents themselves have said about PSHE and by the experience of PSHE in schools over recent years. I know that there has been a patchy nature to some of that teaching. One reason why my noble friends have tabled this amendment is to ensure that there is monitoring by Ofsted of the quality of that teaching and of the kind of training that must be given to those who deliver PSHE, whether it be generically through the school or as a separate subject.

Although we on these Benches welcome the end-of-consultation date for the department's internal review of PSHE—which I believe is 30 November, as elicited through an Oral Question from my noble friend Lady Gould of Potternewton—we still have a slight suspicion that this review set out to be one that featured a certain acreage of long grass. In that context, I ask the Minister why PSHE was removed entirely from the original independent review.

We do not have a lot of time tonight. I want to say simply that we have a generation of children who face enormous and complex problems when it comes to sexual and personal health pressures. These are young people who come up against enormous problems, such as HIV infection, drug abuse, teenage pregnancy, alcohol abuse, obesity and smoking—the list goes on. It cannot be the role of a responsible Government overseeing education to allow chance, discretion or benign neglect to be the official response to the bewildering array of problems that face young people. I was as shocked as I am sure many noble Lords were at the recent evidence of sexual cyberbullying and the increasing amount of cyberbullying that goes on, particularly of young girls. It is imperative that we give young girls all possible confidence to resist such pressure. How do we do that? We do it by arming them with clear and rational argument. As the noble Baroness, Lady Howarth, said, schools can make a difference. We also need to give young boys—here, I look towards the noble Lord, Lord Northbourne, and the work that he does—the confidence to act in a responsible way and to resist their own peer pressure. This is where PSHE comes in. The correct teaching of PSHE, with proper training, can only be a good thing for the next generation.

Lord Hill of Oareford: My Lords, I start by welcoming the noble Baroness, Lady Crawley, from the substitutes' bench. As I am sure that she knows far better than I do, that is not all it is cracked up to be. There have been many times this afternoon when I would very happily have been sitting on the substitutes' bench. However, it is very nice to hear from her in such an important debate.

We have discussed these broad issues many times in this House, even in my short time here, but I think that we have covered the ground well again today with a great deal of thought and passion. It has been a good discussion, in which I hope we have managed to clear the air on some issues.

On the amendment, as we heard in the debate on the previous group, Clause 40 consolidates and refocuses the arrangements around core issues related to education in its widest sense, covering academic and personal development. The point has been well made that education is not solely about academic achievement but is about everything that makes children develop and, indeed, be happy. On the specific issue of children being happy—a point raised by the noble Lord, Lord Layard—inspectors seek the views of parents and children about the school, and in both cases views are sought on whether children are happy in school. It is right that that should be so, and this will continue to feature as a question to parents and children. I believe it is also the first question that is put to parents in Ofsted's new online questionnaire, which gathers parents' views outside inspections. I agree that it is important that those points are picked up.

The amendment moved by the noble Baroness, Lady Massey, seeks to add well-being to the main reporting areas for school inspections, including some specific aspects of well-being, which she set out for us. As I hope my noble friend made clear in her response to Amendment 77, although well-being is not included in the consolidated provisions set out in Clause 40, that does not mean that it is absent from the new arrangements. Indeed, we argue that having behaviour and safety as one of the four core areas—areas that we are trying to slim down so that there is more attention on a smaller number—shows how important well-being will be within the new arrangements. Child protection measures, which we have also talked about, will be a key element of the assessment of the effectiveness of leadership and management of a school. Safeguarding will be picked up there as well as through thematic surveys, as we discussed on the earlier group.

The reason that the Government are keen to change the focus of inspection is illustrated by Ofsted's inspection findings for 2009-10. In that year, teaching was judged outstanding in only 5 per cent of primary schools and 4 per cent of secondary schools. That is one reason why we are keen to make sure that inspection focuses on teaching quality. Schools that perform strongly in terms of pupil achievement also do well on wider aspects of well-being. However, the reverse is not always the case. For example, last year all primary schools that were judged outstanding for achievement were either good or outstanding in terms of healthy lifestyles, but for primary schools that were inadequate in terms of achievement, over half were good or outstanding on healthy lifestyles.

I stress that inspection will focus on those key aspects of well-being. For example, inspectors will be checking to ensure that all pupils have an equal and fair chance to thrive and learn in an atmosphere of respect and dignity. Inspectors will consider pupils' behaviour towards and respect for other young people and adults, including freedom from bullying, and will also consider pupils' ability to assess and manage risk appropriately and keep themselves safe, including from some of the risks that we have discussed—those associated with new technology, substance misuse, knives and gangs, and those associated with relationships, including sexual relationships. This is set out specifically in the new evaluation schedule that inspectors will follow.

8.30 pm

Turning to the delivery of citizenship and PSHE, as the noble Baroness, Lady Massey of Darwen, will know better than me, those subjects are not routinely reported on in the current inspection framework. Like other subject areas, they are covered separately through subject surveys and that will continue to be the case. Aspects of PSHE and citizenship will also be picked up as part of the requirement to take into account the spiritual, moral, social and cultural development of pupils and in considering the breadth of the curriculum that is being offered by the school. In response to the question asked by the right reverend Prelate the Bishop of Ripon and Leeds, as I think I said earlier, there is nothing in the clause that changes the position on the legislation regarding sex education.

As the noble Baroness knows, we are seeking to remove areas of prescription from inspection so that the process of inspection can itself be more focused and rigorous. That point was first made by the noble Lord, Lord Hylton, and then argued very persuasively by the noble Lord, Lord Clarke of Hampstead. I agree with them. My noble friend Lord Lingfield reminded us of the effects of piling lots of words into legislation that can translate into thousands of pages of bumph. Although I cannot vie with my noble friend Lord Elton in speaking as easily as he can in Latin, I agree with the substance of his point about the sometimes unintended consequences of putting things in lists. We strongly agree that pupils' well-being is vital and we believe that the arrangements set out in Clause 40 will enable Ofsted to pick that up in an effective and proportionate way. I ask the noble Baroness to withdraw her amendment.

Baroness Massey of Darwen: My Lords, I thank the Minister for those words. As ever, he is sensible, courteous, wise and thorough. I know that he is well aware of the importance of these issues. Perhaps, yet again, he could meet a small group of us informally to talk about how well-being is to be delivered in a guaranteed way. I am happy to organise a group to do that.

We have had a very interesting, wise and dedicated debate on this issue, most of which I agree with and some of which I do not, but that is fine. I want to raise one or two issues. There is the issue raised by the noble Baroness, Lady Morgan, not in this debate but in the one before: if something is to be inspected, schools will be aware of it and will look at it. I have enormous respect for the noble Lord, Lord Lingfield. I was the

person who welcomed him to this House, in very difficult circumstances—he knows what I mean. He made some very astute comments. Schools have to teach some things and I think that this should be one of them.

I say to the noble Lord, Lord Elton, for whom I have enormous respect, that parents sometimes feel somewhat uneasy about dealing with issues of sexual relations. He is nodding, so he must know, and I think schools can back that up. I am all for parental consultation and involvement, but I dealt with this myself when I was teaching and I agree that sometimes parents have difficulties dealing with the issue and children have difficulty talking to their parents about it. Let us leave it at that.

The quality of teaching materials and the fact that they are age-appropriate is important, as my noble friend Lady Crawley said. I have no intention of calling a Division at this time of night, when there is other important business to come. However, while I am sorry to end on a sour note, the noble Baroness, Lady Walmsley, made a very impassioned and indignant speech and I, like her, still feel indignant and distressed by letter-writing campaigns that impute things to us that we never intended. I beg leave to withdraw the amendment.

Amendment 80 withdrawn.

Baroness Garden of Frognal: My Lords, I beg to move that further consideration on Report be now adjourned for the day. The usual channels have agreed that Report stage should continue on Tuesday 1 November and not later tonight.

Consideration on Report adjourned.

Community Legal Service (Funding) (Amendment No. 2) Order 2011

Motion to Annul

8.34 pm

Moved By ***Lord Bach***

That a Humble Address be presented to Her Majesty praying that the Community Legal Service (Funding) (Amendment No. 2) Order 2011 (SI 2011/2066), laid before the House on 24 August, be annulled, on the grounds that the reduction in civil standard and graduated fees for Legal Help and Help at Court will seriously undermine access to justice because it threatens the financial viability of already hard-pressed community legal practitioners who carry out an essential service to those least able to afford it, including the most vulnerable in our society.

Lord Bach: My Lords, in moving this Motion, I make it crystal clear that we on this side believe that there must be cuts to the legal aid budget. Over the past 30 years or so, perhaps until a few years ago, the amount spent on legal aid went up a great deal, year on year, and that was particularly true in the criminal legal aid field until the amount spent on criminal legal aid, compared with civil legal aid, was totally out of kilter.

As part of the necessary cuts, we, when in Government, took action to reduce legal aid spending and I do not apologise for that. Almost the last act we took in government, before the general election of 2010 was called, was to cut criminal legal aid advocates' fees in the higher courts over a three-year period. It was not popular but it was necessary. Incidentally, that gives the lie to the present Government's claim that we, the previous Government, were not prepared to tackle the deficit. If we had won that election, we would have cut further. My personal view is that there are large savings indeed to be made in our whole criminal justice system. In any event, we had published a White Paper, *Restructuring the Delivery of Criminal Defence Services*, which, if followed through, would have made considerable savings.

However, there are two considerable differences that exist between our proposals and those of the Government. First, Her Majesty's Government are intent on cutting legal aid much too far and much too fast. They have not given any—certainly not enough—thought to the consequences of their policies, either in human or in financial terms. That leads me on to my second point. One of the areas in which they have chosen to axe legal aid, take it out of scope altogether and make savings in fees, is precisely the wrong area of law. They intend to remove welfare benefits advice and representation at all levels, including up to the Supreme Court; employment advice; much housing advice and even more debt advice; and some community care advice and education advice—in other words, advice to the poor and the vulnerable. They intend to save the sum of about £50 million per year through those cuts. Today, of course, we are not strictly debating the rights and wrongs of such an approach, but we shall be able to do that in short order when the Bill, currently in another place, comes to this House.

Tonight we are debating an order that in one fell swoop cuts 10 per cent from all—I repeat, all—civil fees, including family fees. To describe it as a rough and ready figure would be a gross understatement. It is a crude and ill thought-out measure with no evidential justification whatever. Although I am particularly concerned with the 10 per cent cuts to social welfare and community lawyers, the lowest paid of all the lawyers who do civil and family work, I acknowledge the powerful case put forward by other civil and family lawyers to me as a result of my Motion being tabled. I thank all those who have made their case. There may well be champions for them tonight, although I know that because of the lateness of the hour, various noble Lords whose contributions would have been very welcome on all sides have not been able to stay.

Interestingly, there are no comparable cuts on the criminal side—for example, in the sister order that accompanies this particular statutory instrument. This shows that the Government are quite ruthless when it comes to civil and family legal aid and as soft as butter when it comes to criminal legal aid. It is as though they have no sense at all of the fantastic value social welfare law has in our society, allowing, at comparatively cheap costs, early legal advice for many of those who could not possibly afford to get it, with the result that issues are solved and the courts are not full of hopeless cases and litigants in person. Noble Lords will perhaps

[LORD BACH]

have seen the concern of some Justices of the Supreme Court in the newspapers this morning. For some reason, the Government are determined to decimate social welfare law and drive out those hard-working, dedicated and, I would argue, poorly paid lawyers who practise in this field.

Who are these lawyers? They are often the not-for-profit sector; they work in law centres, citizens advice bureaux and other advice centres. Some are solicitors and barristers in private practice. Many, wherever they come from, sacrifice more lucrative legal careers in order to practice this type of law. If they do not practice it, who will?

Their fees are fixed fees brought in in October 2007 and raised by 2 per cent in 2008 but untouched since then. They are not overgenerous. We as a Government brought in the fixed fee and it undoubtedly caused problems in itself. We set up a study with many experts from this area of law to look into those problems, and we produced a document entitled a *Study of Legal Advice at Local Level* in order to attempt to tackle them. We as a Government refused at any time, and particularly during the recession, to cut legal aid spending on social welfare law. We increased it significantly from £151 million in 2007-08 to £208.4 million in our last year, 2009-10. We increased eligibility by 5 per cent, bringing in 750,000 more people, and increased the number of new matter starts. I am proud of what we did.

The proposed fees are set out in Table 1 of the order, to be found on page 4. These cases often take many hours' work. They involve face-to-face contact. Often the lawyer, having seen the client, has to speak to third parties in order to resolve the problem. They are by no stretch of the imagination well paid. There is an exceptional threshold, but a case has to be very long indeed and very complicated to come into that category.

There are currently 52 law centres in England and Wales. They are not profit-making. They have had to make efficiency savings with the introduction of the fixed-fee system. Many rely heavily for the excellent work that they do on legal aid. Eight generate over 70 per cent of their income through legal aid contracts. None of these law centres has a 10 per cent surplus and at present they monitor cash flow on a weekly basis. There is no fat to them at all. All eight are at risk of closure. Four centres are particularly vulnerable, two in London and two outside the capital. Eight hundred thousand pounds is immediately to be taken from law centres' funding overall by the 10 per cent cut. In the medium term, the combined effect of the 10 per cent cut plus the proposed scope cuts is that £8 million out of the £9 million in legal aid contracts that law centres enjoy will disappear. Eighteen law centres out of 52 will just not be viable—it may be more. Where, I ask, will people go to in order to get their legal issues sorted out?

I could make the same points about CABs, the citizens advice bureaux, which have a very high reputation, as do law centres, in Parliament and outside. Obviously CABs do not rely so heavily on legal aid, but many still rely on it, and at a time when local authority funding is, frankly, declining, CABs will also close as a consequence of this order. Noble Lords will remember that a few months ago there was news from Birmingham about the state of CABs in Britain's second largest city.

Private sector firms that do this work also work on the same legal aid rates. All day long I have been receiving e-mails from solicitors who do this work. Sometimes, of course, other parts of these firms subsidise the social welfare law part of a firm, but I have been told that the amount of money that legal aid lawyers of many years' standing get per year would make an extremely interesting data base. It is much less, of course, than that of a solicitor who does not do that work and compares extremely badly with other professionals—very badly indeed. Those who practice in this field and who do this absolutely invaluable work do not expect enormous rewards, but nor do they expect to be penalised even further.

I end with the story of Law for All. Law for All was in west London, and many noble Lords may have heard of it. It was quite a large organisation. It provided legal help in the fields of debt, employment, family law, housing and welfare benefits. It also provided representation for many people over many years. However, it has now been forced to close down in anticipation of the reduction in the fixed fee and, of course, the fact that 90 per cent of their work is being taken out of scope in the Bill that is currently going through Parliament. This is a tragedy for local people, who received legal help in 1,500 cases last year. The local authority in that part of west London is generous, but the Government's proposals have meant that Law For All has closed its doors. I have spoken this afternoon to the chief executive —or should I say ex-chief executive?—who confirmed that the 10 per cent cut that we are debating tonight and the taking out of scope have driven it to close.

It is important to point out that even where the area of social welfare law is not to be taken out of scope altogether, such as in some housing cases and some debt cases connected with housing cases, the order that we are debating tonight means that the continuing work in housing, for example, will be reduced by 10 per cent. All housing work that stays in scope will be affected.

Noble Lords may want to know how much this will save. It is estimated that the saving from the whole order, including the 10 per cent cut in civil and family legal aid across the board, is worth £45 million. The cuts as they affect social welfare law fees are all of £5 million. That is a figure that the Legal Action Group has confirmed. Of course it is a rough figure but it shows just how much or, rather, how little will be saved by this order. Saving £5 million in fees when Her Majesty's Government intend to spend £250 million on ensuring that there are weekly rather than fortnightly collections of rubbish is absolute nonsense. Have we not got our priorities entirely wrong?

In the *Hansard* published today, the Minister has answered a Question that I asked him. The information is that:

> "In cash terms, spending on legal aid in 2010-11 was … some £66 million (3 per cent) below provision".—[*Official Report*, 25/10/11; col. WA 137.]

Yet the aim is to save £5 million by cutting these fees by 10 per cent.

I am not allowed to seek to amend this order and I therefore have to pray against it as a whole. Whether I vote against it tonight will depend on what other noble Lords say in the course of the debate that I hope will follow and, of course, particularly on what the Minister says. I beg to move.

Baroness Deech: My Lords, I declare an interest as chairman of the Bar Standards Board. The Bar Standards Board is the regulatory arm of the Bar Council, not the representative one, and I have no direct concern with the pay that barristers earn. My job is to further the objectives laid down for the Bar in the Legal Service Act 2007. There are eight in Section 1, including protecting and promoting the public interest, improving access to justice and encouraging an independent, strong, diverse and effective legal profession. What I have to say tonight when I encourage your Lordships to annul this order is based entirely on the application of those objectives in the regulation of the education and working lives of barristers.

Last Sunday, an advertisement appeared in the *Sunday Times* headed,

"Helping the most vulnerable in Society".

It was for a new chief executive of the Legal Services Commission, which hands out legal aid. I quote from the ad:

"Our role is to ensure through our providers that independent, high-quality legal advice and representation is available to vulnerable people who cannot afford it themselves. We enable people to protect their rights and defend their interests".

This order flies in the face of the aspiration in that advertisement and of the achievements of the objectives in the Legal Services Act and the profession.

Let me turn first to the effect it will have on women and black and ethnic minority barristers. This is a central plank of the work that we do at the Bar Standards Board in encouraging and retaining those very barristers. The effect of this order is to cut the rates payable in family advocacy by 10 per cent. It will be felt hardest by women and black and ethnic minority barristers, who are disproportionately represented in dependence on legal aid, while white men are the least dependent sector. There has been considerable government pressure to open up the legal profession still more to entrants from all backgrounds, albeit that it is already a very diverse profession.

Alan Milburn's report of 2009 singled out the legal profession in his survey of social mobility, even though the Bar and solicitors go to enormous lengths to explain and reach out to young people all over the country. The Bar has a record to be proud of, with over 15 per cent of pupillages going to black and ethnic minority students in a very competitive market. The cuts in fees in this order undo all that work, and make the Government appear two-faced.

Sixty per cent of the family Bar are women, and they do 66 per cent of legally aided children work. Half the family Bar relies on public funds for more than 60 per cent of its turnover. From their gross earnings, modest though they are, barristers have to pay overheads to chambers and clerks—typically 20 per cent—and in addition meet their own pensions, illness and professional insurance cover and expenses. The King's College London survey of barristers in 2008-09 indicated that 80 per cent of them intended to abandon legally aided public work. This generation of young people have university tuition debts and huge fees at Bar school, and the modest but reliable income that was once their support in the early years at the Bar is now to diminish to such an extent that they cannot earn a living. There is no point in the great efforts put into outreach in this situation.

It continues on into the judiciary. The noble Baroness, Lady Neuberger, reported on judicial diversity in 2010. A less diverse profession means a less diverse judiciary, and fewer women judges. The diminution of the profession also means more litigants in person taking up more court time, not less, with problems being stored for several years down the line because they cannot be settled in court in a proper and timely way.

As with other demanding professions, women are being lost to the Bar after five to 10 years in practice, because of the costs of childcare. It is unaffordable and will be even more so. Twice as many women leave the Bar as do men for that reason. The cut in fees in this order will weaken retention. It will also damage the children who are the subject of court orders, because now the experts who give evidence in child cases are placed within this table of reduced fees, and the fees are set at below the level needed to maintain their practices.

The Government have given no evidenced reason for cutting by 10 per cent, and they have not waited for the outcome of the Family Justice Review, chaired by David Norgrove. In March of this year, its interim report commented on the adverse impact that cuts would have, the lack of data about case-handling and flow through the court, and the contribution made by the lawyers in the cases. In the 2009 study *Family Law Advocacy* by the very experienced researchers John Eekelaar and Mavis Maclean of Oxford University, it was shown that where lawyers were involved in family law cases concerning money and children, the majority of cases were resolved without court process or contested hearing. Even where the cases went to court, in the highly charged emotional atmosphere that one would expect, the presence of specialist family lawyers enhanced the prospects of resolution and shortened the court process, for they are minded to act collaboratively and in the interests of the children. Additional damage has already occurred to women and children through the closure, because of already instituted cuts, of the advice agencies Refugee and Migrant Justice, the Immigration Advisory Service and Law for All, as the noble Lord, Lord Bach, has just mentioned.

There are more constructive ways to save money. First of all there is too much judicial review, now used as the citizen's right of appeal. I was surprised to find when I was the Independent Adjudicator for Higher Education, running an alternative dispute resolution service for students, that those students obtained legal aid to challenge our decisions. There should be a push back against the notion that human rights mean that any and every decision can be judicially reviewed at great cost to the public. As for human rights, the real denial of those is to the middle classes, who are neither poor enough to be eligible for legal aid, nor can afford to go to law at their own expense. They are therefore the real victims, who cannot access justice.

[Baroness Deech]

The other substantive reform needed is to bring certainty into the law of maintenance on divorce. An obvious model for this is the continental European system of community of property, to which the Scottish system is similar, which entails a fixed fifty-fifty split of post-marital property and little ongoing maintenance. Broad-brush justice it may be, but it is cheap and efficient to arrange. As long as we have our Rolls-Royce discretionary system of settling property issues on divorce, couples will continue to waste sums they can ill afford—sometimes amounting to as much as the property in dispute—on deciding who gets what.

This order should be annulled. The Government should await the Family Justice Review report and change substantive law to get a more efficient system without damaging the profession and its diversity.

9 pm

Lord Scott of Foscote: My Lords, I, too, support this Motion and agree with nearly all the remarks made by my noble friend Lady Deech. The statutory instrument is an extremely worrying document, proposing as it does to reduce by 10 per cent the remuneration payable to lawyers for legal services in cases covered by a legal aid certificate. What is the reason for this? The purported reason is set out in the Explanatory Memorandum. Paragraph 7.2 explains that,

"the Government considers that it needs to ensure that it only pays those fees that are absolutely necessary to secure the level of services that are required".

That is an entirely acceptable proposition but I suggest that it is weasel words.

The reason is not that legal aid should not have been granted in a number of cases or that the remuneration assessed under the present regulations exceeds a reasonable charge for the work done or that the work done was unnecessary. The reason is that assistance is needed from the Ministry of Justice to help reduce the budget deficit. Why that could not have been explained as the reason in the Explanatory Memorandum, I know not. But the reason plainly is simply to assist in reducing the budget deficit.

Are others who do work for the Government as independent contractors, such as barristers or solicitors, to have their remuneration reduced to assist in reducing the budget deficit? I have not heard of such a suggestion. Why are legal aid lawyers being singled out for this attention? The effect of the 10 per cent reduction needs to be thought about. A number of lawyers may decline to accept legally aided work, bearing in mind that they will receive 10 per cent less than the sum which would have been reasonable remuneration under present standards. Why reduce what has been assessed as reasonable remuneration?

A second possible result has already been referred to by my noble friend Lady Deech. The number of litigants in person may increase and their presence in court almost invariably means that the case takes much longer. It often means that there will have to be adjournments. The judge with litigants in person before him, particularly if there is one litigant in person on one side and counsel for a paying party on the other side, is placed in the position of having to appear sometimes like counsel for the litigant in person. The judge thinks of points that the litigant in person has not thought of that might assist their case. The judge puts those points forward and then it appears that he is taking the side of the litigant in person. It is an unedifying spectacle but all judges will have experienced it. I have myself. Those are the possible adverse consequences.

What are the beneficial consequences? There would be a reduction in the legal aid bill, but that would depend on the additional costs occasioned by the number of adjournments that litigants in persons may bring about. The Law Society has circulated some documents suggesting that the notion that costs will be saved by these so-called reformed are misconceived. It may be only pie in the sky but the proof of the pudding will be in the eating and the disadvantages, I suggest, are apparent.

More important than the disadvantages to which I have referred is the effect on the civil justice system, for which I have a great affection. I have worked in it all my working life. It is not an optional extra but a system that behoves every government to supply for the benefit of all its citizens. Without a civil justice system self-help would become the order of the day in the settlement of issues between citizens. The civil justice system is there to settle issues between citizens and the Government. A feature of an acceptable civil justice system is that it must be accessible to all who need to use it. The legal aid scheme enables that to be achieved. Some types of litigation are removed from the benefit of the ability of litigants to conduct their cases under legal aid, but, broadly speaking, the legal aid scheme seeks to ensure that access to the civil justice system is available to all, which is right and proper. As I have said before, it is not an optional extra to be paid for only by those who can afford it.

The need for lawyers in that system is apparent also and those lawyers need to be paid for. The notion that that can be avoided by Government is no more realistic than saying that any other necessary service which it behoves Government to provide should be paid for by those who work in it. Are doctors and nurses supposed to contribute to the cost of the National Health Service? Certainly not. How is it different where legal aid lawyers work in cases where legal aid has been granted? A functioning and healthy civil legal aid system is essential. The implications of this statutory instrument are that the Government do not regard it in quite that light but think that these impositions can be made on the lawyers who work in that system in order to reduce the cost that would otherwise fall on government.

The 10 per cent reduction does not perhaps matter very much for senior barristers who have established a practice. They will have some privately funded work. They will have established good will among solicitors and clients that they can rely on in legally aided work as well. They will survive the 10 per cent reduction. The ones who will be struck by it and who may not survive it are the new entrants to the profession. Those men and women enter the profession with trepidation. It is a profession which provides no security. There is no firm that will pay you a salary that you can fall back on. You stand or fall on your own efforts and rely on the fees that you earn. Almost every entrant to the

profession will wonder how long he or she can manage to continue before the financial difficulties become too great. The statutory instrument separates counsel providing advocacy services under the legal aid scheme into senior barristers who have been in practice 10 years or more and juniors who have been in practice less than 10 years. Those who have been in practice for 10 years or more can be expected to have built up some degree of practice and good will. They probably have some privately funded clients. They probably have some good will with solicitors who do legal aid work. They can probably avoid suffering too much from this 10 per cent reduction in their legal aid income. But what about those new entrants with five years' call or less? They have no security at all. They will have a meagre income. They will be hoping that it builds to something respectable. For many of them it does but for some of them it does not. Practically every barrister who enters the profession does so in the knowledge that he or she may be unable to afford to continue for long enough to establish a practice on which they can reasonably live. They may have to take a bolthole, so to speak, into employment in a solicitors' firm or in the legal department in some commercial company. The ones who have to take that course, who cannot wait the length of time necessary to build up a practice they can survive on, will be those who have no advantages of family support to help them in their difficult years. This statutory instrument is going to make those first five years much more difficult. Let us imagine somebody on an employment salary, not a very large one, being told that he or she must suffer a 10 per cent reduction for the future. There will be a drift away from the barrister's profession and into firms and commercial companies, to which I have already referred. It will do a disservice to the civil justice system, which depends on a stream of lawyers coming up through the system and becoming available eventually as potential judges.

I respectfully suggest that this is a bad statutory instrument. If my noble friend Lord Bach puts his Motion to a vote, I shall vote for it.

The Earl of Listowel: My Lords, I regret that I, too, must support the Motion of the noble Lord, Lord Bach, because of my concerns about the impact on child welfare. I regret doing so, because I know that the Government take the welfare of children very much to heart, and I thank the Minister for ensuring that domestic violence issues have been kept out of the scope of the order and that tandem representation of children in private law cases will be untouched.

I remind the Minister and other Members of the House of Article 3.1 of the United Nations Convention on the Rights of the Child, which states:

"In all actions concerning children"—

whether undertaken by legislative bodies or other institutions—

"the best interests of the child shall be a primary consideration".

I should be very interested to hear from the Minister how the best interests of children have been considered in this move by the Government to cut legal aid.

Children need the best experts and lawyers in the immensely complex cases that they are often drawn into. My concern is that those experts will be driven out by the further cut in their finances. Expert witnesses to the family courts—including paediatricians, child and adolescent psychiatrists, educational psychologists, adolescent psychotherapists and independent social workers—are all subject to the 10 per cent cut, having already had their fees seriously cut. For clinicians working in London, the situation is worse, because London-based practitioners are allowed to charge only two-thirds of the amount charged by those based outside London. As everyone knows, it is more costly to practise in London.

I am concerned that because of the impact on expert witnesses there will further delays for children in the courts and that poor decisions will be made. If a child is taken into local authority care and the wrong decision is come to, it will stay with that child for the rest of his life and possibly for the rest of his children's lives. We need to get those decisions right and we need the right expertise.

A further concern of the expert witnesses is that they cannot deal directly with the Legal Services Commission but have to work indirectly through solicitors. Perhaps the Minister could look at that, because it would certainly be an improvement if they could deal directly with the commission.

I look forward to the Minister's response. I hope that he can give some comfort to your Lordships.

Lord Marks of Henley-on-Thames: My Lords, I rise with a heavy heart to speak against this annulment Motion. It is with a heavy heart because, for all my professional life, I have been a devoted supporter of legal aid. I declare an interest as a barrister who over the years has done a great deal of publicly funded work. My first ever motion to a Liberal Democrat conference was on the promotion of legal aid. The Liberal Democrat Lawyers Association, which I chaired for a number of years, drank a toast every year at its annual dinner to the Legal Aid Fund, a toast proposed by a prominent lawyer. It is noteworthy in the context of today's debate that the toast was changed some 10 years ago to "justice for all", as an ironic response to cuts in civil legal aid made by the then Labour Government. I chaired a policy group entitled A Right to Justice, which helped to define Liberal Democrat policy on improving the legal aid scheme. My party has always taken as its starting point for discussion on this topic that access to justice is a crucial right and that legal aid funding provides a vital public service. There is no point in having rights enforceable at law if citizens cannot secure those rights in courts of law. I know from many years' experience of him that that is the position my noble friend the Minister takes as well.

However, while there was much to agree with in all the speeches that have been made so far in favour of the Motion, we live in difficult times. As the noble Lord, Lord Bach, fairly acknowledged, savings must be made. The provisions of the order are estimated to deliver £120 million of the £350 million of savings that the Ministry of Justice is required to make in legal aid over the spending review period from 2011-15. If we do not make those savings, matters can only get worse and later cuts will have to be deeper.

On a personal note, in Greece, my wife's home country, I have seen at first hand the effects of the extreme austerity measures cutting back public

[LORD MARKS OF HENLEY-ON-THAMES]

expenditure. The cuts could have been much less harsh had the Government there got a grip on the public purse earlier when all the signs of overspending were plain for all to see.

The need to make savings in the legal aid budget was recognised by the Labour Party in Government who made some 30 attempts to limit it, reducing fees in real terms across the piece as they did so, between 2006 and their leaving office. Furthermore, that was before the full extent of the deficit became apparent and the need for deficit reduction and cuts across the board became as clear as it is now. On 18 May 2009, the noble Lord, Lord Pannick, asked whether the Labour Government would maintain the rates of legal aid payments in family law cases. The noble Lord, Lord Bach, replied:

"Family legal aid costs have risen unsustainably from £399 million per year to £582 million per year in the past six years. We need to control these costs in order to protect services for vulnerable clients".—[*Official Report*, 18/5/09; col. 1201.]

In the consultation paper sent out by Ministry of Justice in July 2009, for which the noble Lord, Lord Bach, as legal aid Minister, was responsible, its proposals were described as follows:

"Our legal aid system is one of the best funded in the world. We spend around £38 per head on it annually in England and Wales, compared to £4 in Germany and £3 in France. Even countries with a legal system more like ours spend less; for example, both New Zealand and the Republic of Ireland spend around £8 per head".

I regard the fact that we still spend considerably more than comparable countries on legal aid as a matter for pride. That is still the case but it highlights the degree to which the legal aid budget must bear its share of the economies that have to be made.

The Labour Government's consultation paper continued:

"While we devote considerable resources to legal aid—£2bn annually—"

the figure is now £2.2 billion—

"our resources are limited, and we need to review regularly how legal aid funds are being spent, and whether we are securing value for money for the taxpayer and providing the services that the public need".

The Government's response to the consultation, published in January 2010 and signed by the noble Lord, Lord Bach, said:

"The Government wants to ensure that we rebalance the legal aid budget as far as possible in favour of civil help for those who need it most. But we also need to ensure that the resources we currently devote to civil legal aid are being targeted appropriately, and that the rules for granting funding are as robust as they need to be to ensure that resources are expended on meritorious cases … The intended effects are to redirect resources onto higher priority areas, and to ensure that funding is only granted to eligible clients".

The words "rebalance" and "redirect resources" would inevitably have involved real terms reductions in fees. Labour's 2010 election manifesto said:

"To help protect frontline services, we will find greater savings in legal aid and the courts system".

When this Government's consultation paper on legal aid was published, the noble Lord, Lord Bach, very fairly said, as he said tonight:

"It would have been hypocritical of Labour to say we would not cut anything. If we had, we would be rightly criticised".

It is beyond doubt that the reductions in fees embodied in the order, which the noble Lord seeks to annul, do make it more difficult for the already hard-pressed community legal practitioners, mentioned in the Motion, to thrive and will make it more difficult for barristers, junior and senior, who work on publicly funded work. We agree entirely with the noble Lord, Lord Bach, that such practitioners carry out an essential service for those least able to afford it. This order does involve a 10 per cent cut in their fees and in the fees of barristers for publicly funded work across the field of civil and family law, not just social welfare law. It includes—I would suggest rightly—a limit on experts' fees for the first time. It is going to be more necessary than ever for lawyers to practise as efficiently as they can and the harsh reality is that they will earn less from legal aid work. However, I am far less clear that their core viability is threatened.

We will be debating these issues—and the other issues about the scope of legal aid mentioned by the noble Lord, but not the subject of this order—in full when the Legal Aid, Sentencing and Punishment of Offenders Bill comes to this House shortly. I hope we will also be able to explore during the course of this Parliament other ways in which savings might be made without damaging the quality of the justice system. Progress is being made in exploring the achievement of savings through alternative dispute resolution procedures. I believe there is also room for improvement in the efficiency of the court system to produce savings. In the family field, I look forward with great hope to the final report of the Family Justice Review chaired by David Norgrove.

I would make it clear from these Benches that we have been, and are, heavily involved in discussions with practitioners and others , including many civil and family law practitioners, both barristers and solicitors, who have quite rightly expressed their concerns to us. We will examine closely with Ministers whether, and how far, the Bill achieves fairness and the protection of the vulnerable in the use of extremely limited resources. We would hope and expect that in due course, in a reviving economy, any gaps in provision that emerge will be refilled. However, that there must now be some cuts in fees is inevitable in these straitened circumstances.

In advancing this annulment Motion I suggest that the noble Lord and the Labour Party need to tell us what choices they would have made, or would make now, in cutting the legal aid budget. What were the cuts that he was intending to implement? How would they not have threatened hard-pressed community practitioners? Until those questions are answered fully, I suggest that, however regrettable the need for fee cuts in civil and family proceedings, it would not be sensible to divide the House on this Motion.

The Lord Bishop of Ripon and Leeds: My Lords, I am grateful to the noble Lord, Lord Bach, for raising this issue tonight and for concentrating my thoughts—like those of the noble Earl, Lord Listowel—on the welfare of children as they are treated by our legal system. We spent the whole of this afternoon talking about the treatment and rights of children. I look forward to the Government's response and comment on the ways in

which children can be particularly protected in our legal system by the way in which the distribution of fees is arranged throughout that system.

I am still puzzled by the words of the noble Lord, Lord Marks, and why it should be this area in which we look for savings. A number of noble Lords have spoken of areas, in criminal law, for example, where there could be significant savings. Why should it be this area? I think of the work, for example, of Henry Hyams, a firm of solicitors in Leeds which takes some 2,000 cases a year from the most deprived areas of Leeds. They tell me that almost all of those cases involve the welfare of children.

That takes us to the effect of these cuts on those clinicians who provide reports to assist the courts in making determinations about the safeguarding of children—professionals who provide evidence of injury and of abuse and who are often key to the welfare of children. We have improved immensely our understanding of childcare in our society, and much of that has been due to the diligence of such professionals. We are all made very aware when a mistake is made by one of those professionals; we forget the thousands of cases when accurate decisions are taken about children's welfare and their future. The debate that we had all afternoon and this debate come together in looking at the well-being—again—of children, and of their place in our society.

Clergy in pastoral work are often aware of the time spent both by those clinicians and by lawyers with their clients, seeking the best way forward for children and family life, often in work that is undertaken quite outside the fee system. We claim to be a society that puts the family first; social welfare law is an important part of enabling us to do that.

The noble Lord, Lord Marks, spoke of the way in which he hoped that, if there were gaps in our provision, they would be able to be filled again as the economic situation becomes better. But the most important part of our response to the difficulties in which we find ourselves is that those who are most deprived in our society should be those whom we seek to protect from the cuts being made. The Government and many local authorities seek to do that, yet in this particular instance those cuts are bearing at their hardest on those least able to bear the brunt of them.

Lord Beecham: My Lords, I have three categories of interest to declare. The first is professional but, unlike a number of noble Lords who have spoken, not as a member of the Bar and still less as a most distinguished judge but as a mere solicitor and now as an unpaid consultant in the firm of which I was senior partner for some 30 years. The second is a political interest. As my noble friend will recall, it was a resolution that I was responsible for that went to the Labour Party conference some three years ago, which was somewhat critical—and rightly so—of the then Government's policies on legal aid. That led to the establishment of the committee chaired by my noble friend Lord Bach, on which he was gracious enough to invite me to participate. The third is a personal one, because the noble Baroness, Lady Deech, and I graduated at the same time all of 46 years ago from the school of jurisprudence at Oxford.

This order, coming as it does shortly before the Legal Aid, Sentencing and Punishment of Offenders Bill reaches your Lordships' House, is something of a tawdry harbinger of what is very likely to be a prolonged and hard winter for access to justice. It is interesting that the young legal aid lawyers, in the briefing note that they have circulated, drew attention to the fact that the consultation that the Government entered into on their proposals to reduce these fees was very limited. They consulted only the Law Society and the Bar Council; there was no consultation with other stakeholders, such as law centres, community groups or citizens advice bureaux, or indeed any client interests. This does not seem to represent the "no decision about me without me" process, which was allegedly followed in terms of the health service.

9.30 pm

More importantly, that body of young legal aid lawyers has pointed out that the National Audit Office has issued a warning about the process that the Government undertook. They quote the National Audit Office as observing that there is a,

"risk to the sustainability of the supplier base, arising from the fact that remuneration for legal aid work is often unfavourably compared to other legal work. Proposals such as these"—

the ones we are debating—

"have the potential to increase the risk".

In other words, the supply side is likely to diminish. That is surely inconsistent with one of the favourite mantras of the Government—perhaps rightly so—which is to increase choice. If you reduce the supply base, you restrict choice.

I have been looking into and discussing with the Newcastle Law Centre the impact of these reductions in fees on that organisation. It employs three solicitors at an average salary of around £29,000 and two qualified caseworkers at around £25,000. By no possible stretch of the imagination could these be described as fat-cat lawyers—some might regard them as potentially half-starved lawyers—but certainly they are not well paid in comparison with those in private practice or commercial organisations. Interestingly, the organisation also engages the work of eight volunteers. In the last financial year it advised 2,000 people and opened 550 active files. That is a substantial workload. As a result of the fees decision of this order, they are likely to lose some £20,000 a year. Their salaries, of course, have not been increased since 2009, the fees have not gone up since 2008 when the previous Government increased them, and we are now in a time of considerable inflation on non-salary costs. So they are not just getting a 10 per cent cut in the next year; they will be getting a 10 per cent cut on top of inflation and on top of no real increase in the past few years.

In addition, the centre faces the prospective loss of £60,000 a year from the Equality and Human Rights Commission. It is not yet clear whether that funding will be continued to any extent. Perhaps the Minister will be in a position to indicate either when or what kind of decision will be made about this sort of funding. In the current financial year, the centre has also sustained a loss of £30,000 of the £95,000 grant it receives from the local authority, Newcastle City Council. The grant is now £65,000, and given the scale of the

[LORD BEECHAM]
cuts in grant that the authority has received, it can by no means be assumed that the grant will be sustained at that level. One hopes that the grant will be sustained—and there are two Members of your Lordships' House who might be arguing that case—but certainly no guarantees can be given in that respect.

This is an organisation that, at the moment, is carrying out important work in the realms of asylum, immigration, consumer and employment law, and is facing a very fraught future, which will have a significant impact on the people who use its services. I repeat: there have been 2,000 advice cases and 550 active files opened in the past year. That is a significant number of people, many of whom will now be unlikely to be assisted.

Moreover, demand will increase as a result of the prevailing circumstances in the economy and also because of the potential impact of the fees on private practice. I have had discussions with a leading north-east firm that is largely a legal aid firm. It depends on legal aid for about 80 per cent of its fee income. Interestingly, the salaries that are paid there are also pretty modest. The senior solicitors in their legal aid departments earn all of £40,000 a year; less experienced solicitors are on £24,000 a year; and they have a number of caseworkers on between £16,000 and £18,000 a year—again, not exceedingly generous salaries. Some of the departments are barely covering their costs at the moment and that is before this fee cut or, indeed, before taking into account rising inflation. There is also a significant question about the funding of family law, to which other noble Lords have referred. Again, I do not know whether the Minister is able to indicate either when decisions will be made about that or whether they are likely to match or differ from the current position.

It is not clear whether that firm, which is a very significant player in the local legal economy, will be able to sustain the breadth of its operations. Again, if it were to reduce its staffing and coverage, that would restrict the choice of those who need legal advice. The firm which I am consulting has for some time sustained its criminal department on the basis of not covering its costs in some years and barely covering them in others. It has been able to do that only because it has been relatively buoyant in other areas. It cannot be expected that firms in the private sector will be able to continue to provide a pro bono service, even for criminal legal aid. However, if I may say so in the presence of those who have affiliations with the Bar, there and in the court system, rather than at the solicitors' end, is probably where the savings need to be made. There is a real risk of that supply base being undermined and choice being restricted with it.

The noble Earl, Lord Listowel, referred to experts. It is perfectly reasonable to look at the fees payable to experts and to develop a system in which they can perhaps be better controlled. On the other hand, expert advice is often needed. The large firm to which I referred instructs experts—for example, country experts in asylum cases or medical experts in welfare cases. Again, it is reasonable that they should be properly, if not overgenerously, remunerated because there could be a significant impact on the supply base of important people with a significant role in the administration of justice.

I heard what the noble Lord, Lord Marks, said about the annual Liberal Democrat lawyers' get-together. I hope that they will again be toasting access to justice and the legal aid system—perhaps next year, in the light of these circumstances, not with claret but more likely with bowls of thin gruel. With the combination of this measure and what is to come, we are facing a significant attack on the legal aid system. It is perhaps no coincidence that that takes place while we are also debating the future of the National Health Service. Many Members of your Lordships' House last night paid tribute to the post-war Labour Government and the creation of the National Health Service as a great achievement in social policy and a great pillar of the welfare state. Many of us, if not all, particularly on this side of the House, think that that achievement and that pillar are threatened with being substantially undermined by the Health and Social Care Bill. We will be debating that matter at some length over the next few weeks but whether or not that be the case, it is clear that there is a real threat to the legal aid system. It is potentially facing being dismantled and access to justice, which was one of the great achievements of the post-war Labour Government—and a fundamental part of the welfare state that was then developed—is severely at risk.

I do not know whether my noble friend will be dividing the House tonight—it would, perhaps, be unusual for the House to divide on a statutory instrument of this kind—but if he does not, we will, of course, return to the greater issue, the substantive issue, of which this is the trailer, when we look at the legal aid Bill. If your Lordships' House does not significantly amend that Bill, access to justice will be significantly diminished and there will be a significant diminution in the quality and breadth of the welfare state and the society which that great post-war Government sought to create and foster. I hope that the Government will think very carefully before they do further damage to something which, as the noble Lord, Lord Marks, said, we have all been proud of for the past 60 years.

Lord Newton of Braintree: My Lords, we live and learn. I apologise to my noble friend on the Front Bench for my slowness in getting up and, possibly, for what I am going to say. We live and learn: I always knew that I was more liberal than the previous Labour Government; I now know that I am more liberal than the Liberal Democrats, at least as represented in the House tonight. I hope that my noble friends on the Front Bench have not reached the stage of trembling when I stand up, because I am really quite a nice pussycat—in comparison with some, at any rate—but I can assure them that, were this to be pressed to a vote, I would not vote for it. I do not think that it is right for us to be killing off statutory instruments in the way that this would do, certainly with the way that the House operates at the moment. However, it is important that somebody from these Benches should make it clear that, even if we would not want to see this voted down, we are not happy bunnies about the

policies that seem to underlie it. There are those of us, as I have already warned my long-suffering Whip and others, who are likely to want to return to some of these issues when we get to the Bill that is coming down the track towards us.

The speeches in this debate by the noble Lord, Lord Bach, the noble Baroness, Lady Deech, the noble and learned Lord, Lord Scott of Foscote, and others, including the noble Earl, Lord Listowel and the right reverend Prelate—in fact, everybody bar one, dare I say, who has spoken—have made a pretty devastating case. I will listen to the Minister's answer. I am a notoriously pliable chap, and if I am convinced I will be prepared to change my view, but at the moment I think that they have made a pretty devastating case. I have only one question to add to those that have been asked, which is about mental health, where locking people up remains one of the areas where you can get legal aid for the mental health tribunal.

I think it is relevant that two years ago, when I was still chairing the Administrative Justice and Tribunals Council, the Ministry of Justice, under its former incumbents—or the officials, at any rate—asked the council, and me as its chair, to chair the user group for mental health tribunals. This is a little less comfortable for the Opposition Front Bench, but even at that stage, mental health lawyers were expressing the view that the cuts that had been made in legal aid remuneration were, at least in some parts of the country, making it virtually impossible to find people to represent those before the mental health tribunals. It was particularly true in the south-west; there were some concerns in the north-east, but there were certainly concerns, even with the policies that had previously been pursued. I therefore want to ask two questions of the Minister. Is mental health affected or potentially affected by this? What is the position on the availability of legal aid lawyers to help claimants who have been confronted by the prospect of being deprived of their liberty by mental health tribunals? This ties in with the point that the noble Lord, Lord Beecham, has just made very effectively. The net result of this may well be to reduce the amount of support available to vulnerable people, not only because legal aid is not available but because growing numbers of young lawyers who do pro bono work will not be able to afford to go on doing it. This is a worry for many law centres and the like. I should like some comment on that.

9.45 pm

Lastly, and to avoid being too unfriendly to my noble friend Lord Marks, it is the case that a lot of cuts that did a lot of damage were made by the previous Labour Government. That ought to be acknowledged. It is the case that we need to find savings in various places and the Ministry of Justice cannot be excluded. However, if these proposals, under either the previous Government or this one, end up causing damage by trying to save our nation at the expense of the most vulnerable people—whether families, children, battered wives or the mentally ill—it raises some questions. Is the Ministry of Justice being asked to find too many savings? Certainly, it raises the question of whether the Government are finding their savings in the right way.

I say to my noble friend Lord Marks that the same thought occurred to me as had evidently occurred to the noble Lord, Lord Bach. If we can find £250 million to ensure that local councils provide weekly rubbish collection services, which some already do for food waste, I question some of the priorities here. I make no apology for making an uncomfortable speech. If the matter is pressed to a vote, I will not vote for the Motion, but I am not very happy with what we are being asked to support.

Lord Martin of Springburn: My Lords, I have enjoyed listening to the experts in law and legal aid. It is deeply unfair that a 10 per cent cut should be put on one section, and one section alone, of a service that is paid for by the taxpayer.

The Law Society was here today to talk about the future legislation that will come before this House. I asked how much lawyers earn in the field of legal aid. I was told that young lawyers earn £25,000, as has been mentioned. They rightly deserve it, but there are many manual workers, tradesmen and semi-skilled people who earn that kind of money and work hard for it. However, we are making a 10 per cent cut.

As the noble Baroness, Lady Deech, said, many of those who work in the legal aid service are women. I know that there is not much sympathy for Members of Parliament at the moment but I met a former colleague, a lady Member, who said that a substantial part of her salary goes on childcare. There is no doubt that the cost of childcare has gone up. It has gone up for those young mothers who work as solicitors. Any of us who drive a car will know that prices are going up every time we go to a forecourt. Lawyers need to travel to get to court. They are not just based in London. Therefore, this cut is extremely unfair.

I am surprised by the Minister, who was at one time a member of a trade union. I do not know whether he still is; it would have been the T&G that he was in, would it not? I do not think that any organiser in the Transport and General Workers' Union would want a cut of 10 per cent in the workforce, or take it lightly, so why should we do this?

In the constituency that I previously served and the place that I was raised in, a great many men and women who were asylum seekers came, as a result of a decision of the Home Office, to live in my community. More often than not, they came and received advice from legal aid practitioners. While those asylum seekers were coming to me, they were also going to the legal aid practitioners. I was able to form a good working relationship with those practitioners and found that they were doing things over and above their duties as solicitors—working outside office hours and going to people's homes to try to help them. These practitioners are the people on whom we are going to impose cuts.

As the noble Lord said, cuts have to be made, but we have to look at how we implement them. It is the easiest thing in the world to say, "Right—10 per cent across the board". However, it is not necessarily the right thing to do. I urge the Minister to reconsider this matter. At a time when many young people in this profession cannot even get mortgages, because that is difficult, they have to go into the rented sector, and

[LORD MARTIN OF SPRINGBURN]
their overheads are far more than they used to be. I can recall times when people did not have access to legal aid solicitors, and the difficulties and hardship that that caused for their families lasted for years. I hope that the Minister reconsiders this matter.

The Minister of State, Ministry of Justice (Lord McNally): My Lords, this is the point in the evening when I thank everyone for contributing to a wide-ranging debate—so wide, in fact, that it would probably take me at least 40 minutes to reply. I will try to do justice to the debate in a shorter time because the House has more business to consider. I remind the House that this was supposed to be dinner hour business—a matter that the usual channels might look at in future when they do their planning.

The debate was indeed a trailer for the Legal Aid, Sentencing and Punishment of Offenders Bill—now known to its friends as LASPO—that will come to this House. I do not object to colleagues using the opportunity to widen the debate to cover some of those areas. The noble Lord, Lord Beecham, said that it was a "tawdry harbinger" of a long hard winter for legal aid. I say to the House—to the right reverend Prelate, my noble friend Lord Newton, and others—that there would be a long hard winter if this Government did not face up to the spending cuts that are needed. It is all very well, as the noble Lord, Lord Martin, said, to say that this 10 per cent cut was the easy way. I put it to him that the easy way, which we have heard time and again tonight, would be to say, "Not this cut. Not that cut. We would do it in a different way". We have had to face up to the fact that we have to make some hard decisions.

It is not just this part of legal aid that is taking the hit. The Ministry of Justice is a relatively small department with a budget, when we came into office, of £10 billion. We made a commitment for the spending review to cut that by £2 billion. As the noble Lord, Lord Bach, knows, we have only four major areas of responsibility—prisons, the Probation Service, legal aid and court services. They have all taken their cut and it is simply not true to suggest that we have taken a particularly easy view in terms of legal aid. As my noble friend Lord Marks said—and, to be fair, the noble Lord, Lord Bach, echoed it—the previous Labour Government were looking at legal aid. I went to the Commonwealth Law Conference. I have never used the comparison with continental legal aid because I know that there is a different system there, but I particularly sought out the Canadian, Australian and New Zealand law officers to talk about legal aid and they confirmed what the noble Lord, Lord Bach, knows full well—they all consider our legal aid system to be, in their terms, "absurdly generous". It is also untrue that we have not made comparable cuts in criminal legal aid. In fact, the parallel order will, over the period, save some £80 million in criminal legal aid spending.

The noble Lord, Lord Bach, particularly mentioned Law For All. That is interesting because it very much echoes what was said when the Immigration Advisory Service closed. Let us be fair: Law For All has closed before any of these legal aid cuts have come in, so the legal aid cuts have not caused its collapse. However, it is interesting that the Legal Services Commission was able to make provision from other providers, and I shall return to that in a few minutes. We have recognised the problem relating to CABs and law centres, and I shall try to cover that in my main remarks.

The noble Baroness, Lady Deech, made an interesting point. I am proud to be the Minister responsible for promoting diversity in the legal profession. I put it to the noble Baroness that it is not a matter of diversity to suggest that women and black and ethnic minority lawyers should be corralled in one part of the legal profession. Indeed, my drive in terms of diversity—the noble Baroness is quite right and I have talked to both the Bar Council and the Law Society about this—is that the profession as a whole has a responsibility to promote diversity, not in the narrow area of legal aid but across the profession. To be fair, I think that they are responding to pressure in that area. We are taking diversity extremely seriously.

The noble Baroness and a number of other noble Lords also mentioned the Family Justice Review, which is a separate and independent programme of work looking at the entire family justice system. Our proposals are not dependent on the outcome of that review and are focused on legal aid; they go in the same direction as, and in support of, the aims of the Family Justice Review, which I am assured will be published very shortly.

The noble Baroness, Lady Deech, and a number of others talked about the fee levels reducing access to good-quality experts. The benchmark rates for experts have been applied by the Legal Services Commission for some time. The truth is that there are only limited anecdotal reports of problems with access to experts.

The noble and learned Lord, Lord Scott, accused us of weasel words in the Explanatory Memorandum, and I hope that my opening remarks have removed those weasel words. Of course, much of this has been driven by the need for cuts in public expenditure, but we have tried to do so in a way that focuses legal aid on the most needy.

We go back to the issue of the level of spending. What is so sacrosanct about £2.2 billion? It certainly was not sacrosanct for the previous Labour Government because they were planning to cut it anyway. The system is not being dismantled. It does not help when the noble Lord, Lord Beecham, makes that kind of comment. I could make a point about the earnings of barristers in family legal aid work, but let us not go down that route.

10 pm

I turn to the points made by the noble Earl, Lord Listowel, and the right reverend Prelate the Bishop of Ripon and Leeds. There is a question about whether the Legal Services Commission should be able to commission experts directly, and that could be looked at. On aid to children, we will retain legal aid for child parties in family cases. In 2009-10, we provided £133 million civil legal aid funding to child parties in all categories of law and, under our proposals, around 95 per cent of that aid would continue. I hope that gives some reassurance to the noble Lord on the points that he raised.

Apart from getting some of the previous Government's record into *Hansard*, I am also grateful to the noble Lord, Lord Bach, for pointing out that we are, as the Lord Chancellor has pointed to, consciously looking for an approach to the settlement of disputes that is less legalistic and brings in mediation and alternative dispute resolution. We are also looking at possibly legislating in the next Session of Parliament on court efficiencies.

The noble Lord, Lord Beecham, talked about the supply side being likely to diminish and I shall try to cover that in a moment. It is certainly not right to say that we did not consult widely. The reforms were subject to full public consultation, which ran from 15 November 2010 to 14 February 2011 and elicited over 5,000 responses.

Lord Beecham: The lack of consultation to which I referred and on which I quoted the legal aid lawyers was in relation to this fees order, not the Green Paper.

Lord McNally: These were all foreshadowed in the Green Paper. The noble Lord, Lord Newton, is not a happy bunny but, as I said to the noble Lord, Lord Beecham, if we were not willing to take tough decisions, there would be a lot more unhappy bunnies around because we would be paying interest rates of two, three or four times what we are paying now, which would result in far greater cuts in public expenditure and services. The fact that our Government are not making headlines in relation to the economic situation in which they find themselves is because we had the courage to take tough decisions early. I have no doubt that when we ask colleagues and the Opposition to face up to that fact, we will always have the problem that these are tough decisions; we have never resiled from that.

Lord Higgins: Would my noble friend give way?

Lord McNally: It is very late.

Lord Higgins: Yes, I realise that, but my noble friend has just made a rather extraordinary statement. He said that we would be paying interest rates three or four times greater than we are now and I just do not understand what he means.

Lord McNally: At what rates is Ireland borrowing at the moment? I am suggesting that we would have lost control of our economy in the way that some parts of Europe have lost control of their economies. The consequences for public expenditure would have been much more severe. I would have thought that I would have had the support of my noble friend in that.

Lord Higgins: No one is more enthusiastic than I am that we should cut the deficit as fast as possible. I have made that clear, time and again. I just did not understand the quantitative statement that he made, but I do not wish to delay the House further.

Lord McNally: On the other points that the noble Lord, Lord Newton, made, legal aid is currently available for legal advice on any mental health matter and representation for mental health matters heard in the county court, such as charging a detained person's nearest relative for mental health legislation purposes, for damages claims and for representation before the first tier mental health tribunal and onward. We propose retaining these changes within the scope of legal aid.

In 2010, tenders for legal aid contracts for mental health demonstrated a strong demand for mental health work, with nearly three times as many new cases bids than there were cases available.

I hope that answers the points that the noble Lord, Lord Newton, raises; namely, that there is the supply that he was concerned about and that we will continue this in scope.

The House will be aware that the Government have had to make some tough decisions. As I mentioned, the noble Lord, Lord Bach, accepted that when he had responsibilities for this matter the legal aid fund had to play a part in the often difficult exercise. To govern is to choose. It is a key role of Government on behalf of the taxpayer to ensure that the amount they pay for any service represents maximum value for money. In this context it is essential that the Government ensure that they only pay the rates that are necessary to secure the level of services that are required. While this may not be welcomed by those who provide services funded by legal aid, it is a reality that suppliers of other services across the country face this reality on a daily basis. The Government recognise that some providers may choose not to continue to provide legally aided services in this environment, but it is not the purpose of the legal aid system to sustain the current legal market. Rather, we want to continue to have a sufficient supply of providers of satisfactory quality to provide an appropriate level of services for legally aided clients.

The order that we are debating this evening introduces a number of changes to the fees that the provider can currently receive for carrying out legally aided work. The main features were referred to by the noble Lord, Lord Bach. Justice is required to make savings in the year 2014-15 of about £50 million. My noble friend Lord Marks referred to the total savings of £120 million. With the exception of the family fee reforms which will take effect on 1 February 2012 when new contracts under the family re-tender exercise are expected to commence, the new fees took effect on 3 October 2011 and apply to all cases commenced after that date.

The reforms were subject to a full public consultation which ran from 15 November 2010 to 14 February 2011. I have already referred to that in reply to the noble Lord, Lord Beecham. With the exception of the Law Society, no respondents provided any form of detailed numerical analysis of the market. The Law Society did so through Mr Andrew Otterburn. His report indicated that while the fee reduction will inevitably reduce the income of solicitor firms, on the whole, they would still make a profit even before making any efficiencies in working practices.

Subsequent to his report, Mr Otterburn specifically confirmed to the MoJ that, in his view, an overall phased reduction in fees of around 10 per cent, with the reduced fees only applying to new cases commenced after the implementation date, would allow solicitor firms time to adjust to the new fee levels and would not, therefore, necessarily make supply unsustainable.

[LORD MCNALLY]

The Government accept that the proposed reforms may be particularly challenging to the not-for-profit sector. That was raised by a number of colleagues. However, it is also the case that the major issue for this sector, generally, is change to other sources of funding; for example, as was acknowledged by the noble Lord, Lord Bach, from local authority cuts, which may make supply in the areas they cover vulnerable in any event.

This is clearly a matter for concern for the Government as a whole, and the issue of the future of the voluntary advice sector will be considered as part of a cross-Government review on which an expected announcement will be made shortly. In the interim, the Government have already provided transition funding to assist the not-for-profit sector to adapt to the changing financial environment. I understand that overall 45 individual CABs and 17 law centres have taken advantage of this fund. As the noble Lord will be aware, the Government will also be providing a further £20 million of funding for the not-for-profit sector. Specific details of this fund will be made available shortly.

In the context of legal aid services, the issue is whether services will be available for clients rather than whether that service is provided by any particular provider. We assessed the likely impact of the reforms when considering the responses to the consultation and overall are satisfied that the reforms are sustainable and that, although individual providers may leave the legal aid scheme, there will be a sufficient supply of providers of satisfactory quality to provide an appropriate level of service in all areas of law. The Government therefore consider that the fee reductions will be sustainable and will ensure that clients can continue to access legally aided services.

As noble Lords will be aware, the Justice Committee report on legal aid concluded that, given the extent of the savings that the Ministry of Justice is having to make, in principle it is correct that fees should be reduced. We are willing to look at areas of isolation—the so-called legal aid deserts—and there are a number of actions that the Legal Services Commission can take to mitigate shortfalls if they develop. As I said earlier, it is also true that some of the fears that people would not come forward have not been borne out in areas where individual firms have collapsed. Indeed, in all the areas where we put forward contracts, there has been an oversupply in terms of those seeking that work.

In addition, there is a genuine alternative. The Community Legal Advice telephone helpline is an alternative for those involved in legal aid. I see the noble Lord, Lord Beecham, shaking his head. The other night, I went to a Law Society function giving prizes to successful law firms, and I was amazed by how many of the prize winners were offering online and distance advice. The old idea of face-to-face may not survive. There is no doubt in my mind that the legal profession is a profession in transition in many respects.

I am being told to shut up, and I will. The fact is that wherever we have been looking at new contracts, we have found that they have been oversubscribed, so I do not think that this is the issue that is suggested. It is not a 10 per cent cut per individual. It is a challenge to those firms and to the legal profession to find different methods of service, different structures and different efficiencies. That is a pattern that many professions and many industries have found over the years. We are confident that there are sufficient numbers of providers willing to remain in the legal aid market. I am well aware that a lot of what we have discussed today is a dress rehearsal for when the LASPO Bill comes, but I do not believe that it would be right to pass this Prayer this evening, and I sincerely hope that the noble Lord, Lord Bach, will resist putting the Motion to a vote.

10.15 pm

Lord Bach: My Lords, I thank all noble Lords who have taken part in this debate, and especially the Minister for his winding up. I will give the House the good news, which is that I certainly do not intend to divide the House. I would very much like to, particularly given the degree of support for my Motion from around the House tonight—I am most grateful to noble Lords who have supported me—but it is too late to call a vote tonight, and in any event I am not certain that it would be the right thing to do, given that the Bill is due to come to this House next month. I will not be calling a vote, so anyone who wants to go now, please feel free.

I am afraid, though, that it was not the Minister's arguments that persuaded me not to call the vote—indeed, if he had gone on much longer I might have been tempted to call it in any event. I shall make a few points and then the House can move on. Some very good speeches were made, if I may so. The noble Baroness, Lady Deech, talked about the Bar with great experience and knowledge. The noble and learned Lord, Lord Scott of Foscote, made some very important points, one of which I will come back to at the end of what I have to say. The noble Earl, Lord Listowel, and the right reverend Prelate the Bishop of Ripon and Leeds were both right on the spot with their concern for children law, if I may call it that. My noble friend Lord Beecham, with his experience, made very telling points as always. Last, but certainly not least, the noble Lord, Lord Newton of Braintree, made a very telling contribution, and one to which I think the Government side should listen with some concern.

As to the speech of the noble Lord, Lord Marks, of course I admired his loyalty, perhaps rather more his loyalty to the Government and to the Minister than to his party, which as I understand it has already made it clear at conferences twice this year that it does not like the way in which the Government are behaving towards legal aid. He asked me to state which cuts my party would have made in Government. I am not sure that he was listening with his usual care to what I said in my opening remarks, which was that the Labour Lord Chancellor and myself put out a White Paper called *Restructuring the Delivery of Criminal Defence Services*, which we would almost certainly have put into effect had we been elected—which we were not—and which would have saved a great deal of money. It would have been controversial and I have no doubt that there would have been debates in this House too in that event.

I did notice that in his interesting speech there was nothing at all about social welfare law and nothing about whether he felt it was right to attack social

welfare law. What I had to say earlier was very much based around that part of the order. He said very little about criminal law, either, and about whether savings might be made in that field. He quoted figures and speeches that I had made, in which I, like legal aid Ministers down the years—as they no doubt will in the future—had said how generous our legal aid system was compared to the ghastly rest of the world. I did use those phrases, and there is some justification in them, but to be honest, not perhaps quite as much as I used to think when I spouted those words. For example, we compare ourselves with New Zealand, another common law country, and say, "My gosh, New Zealand gives a much smaller amount for legal aid than we do". However, the situation in New Zealand is quite different. There, for example, there is no liability compensation, which costs a great deal in this country. There are other considerations as well.

Let me be frank: when we were in Government, I have no doubt that we made mistakes in this field. I am sure we did. There is no doubt in my mind that his Government are making mistakes now as well. Perhaps the noble Lord, Lord Marks, will remember next time he speaks to the House on these matters that we are dealing with what his Government are intending to do, not with what my Government did or did not do when they were in office.

The Law Society has suggested savings of up to £350 million as an alternative to the legal aid cuts that the Government are putting forward. As we did not hear it tonight, we look forward very much to hearing what is wrong with the Law Society's—

Lord McNally: What is wrong with the Law Society's figure is that it does not save public expenditure to shuffle costs around Whitehall to other departments or to propose extra taxation on alcohol. That is not saving public expenditure; it is shuffling the pack.

Lord Bach: If the noble Lord is right, perhaps he will explain this decimation of social welfare law, with its few savings for the Ministry of Justice, and how it will cost infinitely more to the state as a whole when problems are not solved, people are chucked out of their houses, debts grow bigger, families break down and children commit crime. Other departments will have to pick up the pieces for the paltry savings that the Ministry of Justice will make. Please do not give us that stuff about public spending. The truth is that these Ministry of Justice savings—we have said that we accept that the MoJ has to find a number of savings—will cost the state and the community much, much more.

As the noble and learned Lord, Lord Scott of Foscote, said, civil legal aid is not an optional extra. The concern is that this Government are treating it just as an optional extra and the cost will be much greater. We could see which way the Government were going on legal aid way back in June or July 2010 when out of the blue they removed the grants that were given by the Legal Services Commission for young legal aid lawyers to get legal contracts with legal aid firms. It cost a few million pounds a year, if that. But the Government abolished them at the start and we should have been wise as to what they were planning to do now. There was absolutely no reason for doing that and there cannot be any reason for doing what they are intending to do now to social welfare law.

Legal aid in the civil field is well worth protecting. I shall end with a quote from Supreme Court Justice Lewis F Powell who spoke about the American system but it could just as easily be applied to the British system. He said:

> "Equal justice under law is not merely a caption on the facade of the Supreme Court building, it is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal system exists … it is fundamental that justice should be the same, in substance and availability, without regard to economic status".

He was right. I hope only that the Government change their mind. I beg leave to withdraw the Motion.

Motion withdrawn.

Armed Forces Bill

Commons Reason and Amendment in Lieu

10.22 pm

Motion A

Moved by ***Lord Astor of Hever***

That the House do not insist on its Amendment 6 to which the Commons have disagreed for their Reason 6A.

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): My Lords, the debates on the subject of medals are further evidence of the strength of feeling in both Houses on this important matter. I acknowledge the conviction with which a number of noble Lords have pursued their concerns about the Pingat Jasa Malaysia medal and about aspects of the process for deciding what is to be done when other states wish to honour British subjects, particularly those who serve Her Majesty and their country.

In particular, I recognise the contributions made by the noble and gallant Lord, Lord Craig of Radley, the noble Lord, Lord Touhig, my noble friends Lord Palmer and Lord Lee, and many other noble Lords. There is widespread concern in this House and in the other place about whether it is time for a wide and independent review of the rules which guide the HD Committee in making its recommendations to Her Majesty. There is concern in particular about whether, in advising Her Majesty on the acceptance and wearing of the Pingat Jasa Malaysia medal in 2005 and 2007, the HD Committee made the right recommendations.

I must begin by making it clear what the Government will do in response to these concerns. First, I have consulted ministerial colleagues, including the Deputy Prime Minister, who have agreed that there should be a fresh review of the rules governing the award of military medals. This review will be conducted by an independent reviewer with full consultation with interested parties and will take account of the issues raised in this House during our previous debates. As part of this process, I will recommend that a solution needs to be found which addresses concerns about double-medalling and about rules setting fixed time limits for

[Lord Astor of Hever]
the award of decorations. The rules need to be reviewed from first principles to see whether they remain fit for purpose. My right honourable friend the Secretary of State for Defence has already written to the noble and gallant Lord, Lord Craig, stating that this is what we will do. If we are to allow this review to do its work thoroughly and effectively, we need the agreement of this House that the way forward is independent consideration of what improvements should be made to the current system of advising Her Majesty.

There is then the question of the Pingat Jasa Malaysia medal. In anticipation that we will be able to deal with this issue under current HD Committee rules and procedures, I have already commissioned an urgent HD paper recommending that holders of that medal be able to wear it with the approval of Her Majesty. I am confident that we are going to resolve the issue of the wearing of the PJM medal. Within the present architecture of the royal prerogative, the HD Committee will be able to progress this matter swiftly so that the PJM can be worn on Remembrance Sunday this year and thereafter without restriction.

I shall now speak to the Motion and explain why we should not accept the noble and gallant Lord's amendment. The issue now is not about the PJM medal. I have explained what we will do about that. And it is not about the rules applied by the HD Committee. There are strongly held concerns about those rules and I have said what we will do about them. The issue is not even about taking the opportunity to show respect and admiration for the Commonwealth. Even less does it provide support or recognition for Her Majesty as the head of the Commonwealth. What then are the issues relevant to the amendment? They are these. Is it right for Parliament now to overturn decisions taken by Her Majesty? Is it right for this House to establish a precedent for future interference in past and future decisions? Is it right for decisions on the award of medals to be decided and rules laid down and changed in the glare of parliamentary debate rather than dispassionately? And is it right, as the amendment would provide, to create a rule by which decisions on the acceptance and wearing of Commonwealth medals by members of the Armed Forces and the Civil Service are to be entirely a matter for the Commonwealth Government making the award?

My answer to these questions is this. First, by overturning past decisions that have been made on Commonwealth medals, it would establish a precedent that Parliament may overturn after any length of time any decision of the sovereign as the fount of honour. Secondly, it would establish a further precedent that Parliament is able to lay down and change rules which are to be applied to decisions on the acceptance of honours from foreign and Commonwealth countries. It would assert that Parliament can do so in a way which alters the fundamentals I have described of the existing arrangements, such as the need for a basically consistent approach to awards by all friendly and allied states. Thirdly, it would take away from the sovereign and, indeed, the United Kingdom any control over the acceptance of Commonwealth medals. Whenever a Commonwealth country awarded a medal or honour to members or former members of the Armed Forces or the Civil Service, that decision would be binding, even if it was against the wishes of our Armed Forces, of Parliament or of the sovereign.

10.30 pm

I attach a special value to our membership of the Commonwealth and to our connections with its members. They are of the greatest importance historically, culturally and constitutionally. But I do not believe that the amendment is the way to reflect our respect for the Commonwealth or for Her Majesty as head of it. Moreover, the amendment would create a different principle for the wearing of medals awarded by Commonwealth nations from that which applies to those awarded by other allies.

The operations in which our Armed Forces find themselves involved are increasingly international. British units work regularly alongside United Nations, NATO or EU partners. It would not be easy to explain to non-Commonwealth allies why the United Kingdom had decided to treat their awards on a fundamentally different basis from those offered by a Commonwealth nation. It would be even more difficult to justify to the members of our Armed Forces whom a non-Commonwealth country wished to honour.

Last, and perhaps of greatest concern in the long term, is the assertion which must underlie the amendment, that decisions on the award of honours and whether to change them are better made in the emotive and often party-political atmosphere of parliamentary consideration than in the detached and largely non-political approach envisaged in the arrangements set up by King George VI.

It would be wrong in principle for this House to lead the way towards such a new approach to decisions on honours, towards setting a precedent of interference in such decisions or towards a diminution of Her Majesty's function. For these reasons, I cannot accept the noble and gallant Lord's proposed Motion A1 and urge noble Lords to support Motion A, that this House do not insist on the inclusion of the amendment in the Bill. I beg to move.

Lord Craig of Radley: My Lords, I beg to move Motion A1 and thus speak to my Amendment 6B, which I proposed as an amendment in lieu. In the latter part of his remarks, the Minister reminded the House of the Government's thinking on the issues that have been central to our debates on the medal amendments that the noble Lords, Lord Ramsbotham and Lord Touhig, and I tabled at the earlier stages of the Bill. Our responses to the Government's views are on the record of our earlier exchanges. I do not propose to dwell on them now other than to say that my colleagues and I repeatedly urged the Government to take action on two of the issues about which the Minister has just spoken.

I shall speak first about the Pingat Jasa Malaysia medal, the PJM medal, the subject of my Amendment 6B. This award was offered by the King and Government of Malaysia to members of Her Majesty's Armed Forces and other Crown servants for their contributions

to that country's security in the difficult times of the Malayan emergency and, later, during confrontation with Indonesia. In 2007, acceptance of this award was recommended by the HD committee to Her Majesty for approval, but the committee did not recommend that the medal could be worn without restriction.

As I have explained in earlier debates on the Bill, many recipients have been unhappy about this, particularly as Australian and New Zealand recipients, alongside whom they saw service, were granted permission to wear the PJM medal at all times. The Minister has now assured the House that the HD committee will be making a further submission to Her Majesty and that, subject of course to her approval, these medals may be worn on Remembrance Sunday this year and thereafter. In the context of the Bill that is bringing the Armed Forces covenant into legislation, this is a most welcome approach of fair treatment of veterans who are the recipients of the PJM medal. On that understanding, I do not intend to press my Amendment 6B, which deals solely with the unrestricted wearing of the PJM medal, since the noble Lord's proposal may achieve the result that it seeks to secure by the more traditional path: that is, within the present architecture of the royal prerogative.

The other topic raised by the noble Lord relates to the workings and responsibilities of the HD committee, which has the most difficult and sensitive task of dealing with a variety of issues concerning medals and other rewards, particularly those of foreign Governments. I greatly welcome the Minister's reassurance that the time has come for an independent review of the HD committee. In moving our Amendment 6 in your Lordships' House on 10 October, I contended that there are some HD committee rules that,

"are not fit for purpose".—[*Official Report*, 10/10/11; col. 1348.]

On those grounds, I sought the view of the House and our amendment was carried. The arrangements that the Minister has just described will set in hand a thorough and independent look at the HD committee. In the light of the Government's position as just stated by the Minister, I attach great importance to the independent leadership of this review. I am grateful that it will consider in particular the no-double-medalling and fixed-time limits that have been the source of much unhappiness and concern over the years. I hope that the HD committee, as well as the whole House, will welcome the review.

I should also like to place on record my appreciation for the extremely considerate and open way that I and my colleagues have been treated in dealing with these matters. The new Defence Secretary, in his most busy initial week, took time to discuss them with me and, as the Minister pointed out, has also written to me. The Minister has been most approachable and considerate; he is in full grasp of his brief and greatly admired in this House. It is a measure of his great contribution to the Bill that he was able to persuade his business managers and all the involved departments of Government that it was not realistic nor in the best interests of the Armed Forces and veterans to resist every amendment. Instead, he has contributed greatly to the Armed Forces Bill outcome, with which all should be content.

I am full of admiration for the extremely hard work and commitment of the team of officials and service personnel whose most strenuous efforts have enabled us all to reach this accord. I hope that it is in order to commend them and thank them. I should be grateful if the Minister would pass on my appreciation and that of my colleagues.

I should rather have avoided dealing with any of these issues as grounds for party political discord. It is alien to me as an independent Cross-Bencher, particularly when dealing with matters that affect our Armed Forces. Nevertheless, I am most grateful to the more than 200 Members of your Lordships' House who supported our Amendment 6, which, along with other amendments, sent the Bill back to the other place. I am personally delighted that the end result has been agreed by negotiation and agreement, a smart win-win result for all sides.

This is a historic Bill since it introduces into the law of the land the Armed Forces convention, an arrangement that will prove to be most valuable and supportive to service personnel, veterans and their families. The Government are to be congratulated on bringing it into statute in this carefully considered manner. For the convenience of any debate, I formally move Motion A1, having made clear my intention about Amendment 6B.

Lord Touhig: My Lords, I welcome the statement from the Minister this evening about the Pingat Jasa Malaysia medal and the independent review of the operation of the HD committee. We have battled on this issue for years in the other place. Here in the House of Lords—I do not want to enter into the debate about a future appointed or elected House—we have achieved something that the elected House did not manage to achieve regarding the Pingat Jasa Malaysia medal. It is a great credit to all concerned that we have been able to do that.

I also think that the Minister's statement tonight sends out the positive message to a close and dear ally in Malaysia, a Commonwealth ally, that we respect the generosity of the king and the people of Malaysia in honouring those British servicemen who fought in that country. I certainly welcome the independent review of the HD committee. I can see that it has a difficult job but I am not entirely happy with the way that it has done it.

I do not think there is anyone in this House who does not have the highest regard and affection for Her Majesty the Queen, and no one would want to put her in a difficult position regarding the question of honours. I feel that it is the actions of the HD committee that have embarrassed Her Majesty in this respect by the way it advised her that the veterans should accept the medal but not wear it. Thankfully, that is being resolved this evening.

I am a great believer in fate, in the sense that I think that sometimes one faces an issue or a problem and someone comes along and solves it. I pay tribute to the Minister because I am not sure we would have achieved this without his personal efforts. He has been hard-working, honourable and decent throughout this whole thing and has strongly represented the views of this House, and of many others outside, with regard to the veterans.

[LORD TOUHIG]

I join the noble and gallant Lord, Lord Craig in his praise of the Minister's team because they have assisted the Minister in bringing about this decision. I cannot speak highly enough of the regard I have—and I am sure the whole House has—for the Minister. As for the noble and gallant Lord, Lord Craig, he has led from the front. He has been persistent and pushed hard, and worked with the Minister and lobbied. I do not know how many meetings he has had with the Minister, and I have to weigh the e-mails I have had from him about the progress he has made on this issue. We owe him a great deal.

I do not wish to detain the House any longer at this late hour. I can honestly say that as a Parliament and as a country, as a result of the Minister's statement tonight on the veterans of Malaysia, we have redeemed our honour.

Baroness Finlay of Llandaff: My Lords, I briefly add my thanks to those expressed by my noble and gallant friend Lord Craig of Radley to the Minister for his personal commitment to the Armed Forces and the veterans, his personal commitment to ensure that this House had a Bill that is now moving forward to become an Act in a much better condition, and the tireless way with which he and the Bill team have made themselves available to us all. Of course I am glad that he managed to negotiate that the amendment over inquests for military personnel was incorporated. The joy over that must not be diminished by disappointment over the defeat last night over the issue of the chief coroner—that is for another day. For tonight, sincere thanks are due to a Minister who has shown enormous commitment and has worked with us in this House to improve the workings. This has been this House at its best, and we are all grateful to him.

Lord Lee of Trafford: My Lords, I briefly pay tribute to the noble and gallant Lord for the way that he has led the campaign in your Lordships' House to improve the Bill, particularly in regard to the PJM medal. The Ministry of Defence—in the nicest way—does not have the reputation of being the most flexible of ministries, as indeed I know as a former Minister. However, on this occasion we have seen that the ministry has demonstrated flexibility and compromise, primarily because of the personal efforts of the Minister, who has worked tirelessly to build bridges and bring about a compromise. I pay tribute to him and his Front Bench colleagues for the work that they have done. We have seen during the passage of this Bill this House working together at its best. We have improved the Bill and we should be proud of what collectively has been achieved.

10.45 pm

Lord Tunnicliffe: My Lords, we on these Benches are content that the noble and gallant Lord, Lord Craig of Radley, is not going to press his amendment, and we are content with the outcomes on this issue. This is the last chapter in the Armed Forces Bill, and we are pleased with where it has got to. We are pleased on this issue and on the other issues where concessions have been achieved. It has been very pleasing that the Bill has engaged all sides of the House, and the contribution made by noble and gallant Lords in this specialist area has been particularly useful and has added to our debate, improving the outcome. That is also true of other people with significant service experience who have contributed.

I, too, thank the Minister for the way in which he has handled the Bill, and I thank his staff. We on the opposition Front Bench have been able to give the Bill proper scrutiny, much of it in private, which has saved time in the House, because of the co-operation that we have had. We are impressed and delighted, like everybody else, with the way in which the Minister has handled and crafted the concessions. However, it is a matter of raw political reality that this concession has come forward because of the fear of defeat in the Division Lobbies. Many of us have worked in government and we know the importance that the political reality of defeat brings to discussions. I am sure that the Minister has taken this pressure and used it very carefully. It is a matter of raw political reality that, without the fear of defeat, the PJM medal would not be worn this Remembrance Day, and it is highly probable that without the pressure of potential defeat in the Lobbies many other concessions would have not come forward.

This is a good Bill about just causes, and it is a good Bill because it has been a product of very good debates, but it is also a good Bill because of the political pressure that we have brought to bear from these Benches. The House can be properly and justly proud of this Bill, and we on these Benches are proud of our contributions.

Lord Palmer of Childs Hill: I would like to thank all noble Lords and particularly noble and gallant Lords for their work, and also my noble friend the Minister. The point that I would like to make is that acceptance of the Malaysian medal was approved; it was wearing it that was not. That was a rather strange situation. My only comment at the lateness of this hour is to hope that my noble friend the Minister enjoys wearing his medal at the earliest opportunity.

Lord Astor of Hever: My Lords, the passage of the Bill through your Lordships' House has presented a number of challenges, and I am delighted that we have been able to resolve them. I am very grateful to the noble and gallant Lord, Lord Craig, and all those other noble Lords for their very kind remarks this evening. As ever, I am grateful to noble Lords on all sides of the House for their help, support and unfailing courtesy. I echo what the noble and gallant Lord, Lord Craig, said about the excellent team of officials, and I will ensure that his full appreciation and thanks are passed on to them.

I also thank my noble friend Lord Wallace of Saltaire for his consistent support to me all the way through the Bill. I very much appreciated that.

Finally, I must pay tribute once again to the Armed Forces. This Bill is for them, and I believe that we deliver it in good shape.

Lord Craig of Radley: My Lords, I thank all those who have spoken, and I thank particularly the Minister for the help that he has given. The hour is too late to go any further than that, other than to express my appreciation, and I beg leave to withdraw my amendment.

Motion withdrawn.

Motion A agreed to.

Public Bodies Bill [HL]

Returned from the Commons

The Bill was returned from the Commons agreed to with amendments. It was ordered that the Commons amendments be printed.

House adjourned at 10.50 pm.

Grand Committee

Wednesday, 26 October 2011.

3.45 pm

Welfare Reform Bill

Committee (8th Day)

The Deputy Chairman of Committees (Baroness Fookes): My Lords, the Grand Committee is in session. If there is a Division in the Chamber, as Members will surely understand by now, we have to adjourn immediately and resume after 10 minutes. There is an additional arrangement. I remind noble Lords that those Members who have registered with the Clerk of the Parliaments may vote in their places in the Grand Committee, provided that they are present in the Grand Committee three minutes after the Question is put in the Chamber. Members who have not registered to do so or who are not here at the three-minute mark must then vote in the usual way. I also remind Members that although they must speak up, please do not touch the microphones.

That deals with the household notices. Let us turn to the Bill.

Clause 15: Work-focused interview requirement

Amendment 51CDZA

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

51CDZA: Clause 15, page 7, line 10, leave out "(or more paid work or better-paid work)"

Lord McKenzie of Luton: My Lords, this is a probing amendment designed to focus on issues of in-work conditionality. We attach it to Clause 15, which is just on the "Work-focused interview requirement", but it is intended to cover work preparation requirements as well as work search and work availability requirements.

The Minister will be aware that some of us were able to attend a briefing session with officials yesterday—I thank them for that. It is clear from that session that much of the thinking about in-work conditionality is at best embryonic, notwithstanding that we are being asked to give considerable powers to the Secretary of State in this primary legislation.

The proposition that conditionality should not stop when someone accesses work is not of itself unreasonable. The progression from a mini-job to a full-time job is to be encouraged for those whose health, family and caring commitments permit. How it will work in practice is what matters. We have only a few parameters at the moment. It is the express policy intent that conditionality will cease to apply for claimants without caring responsibilities or health conditions at a level of gross earnings equivalent to 35 hours per week at the national minimum wage, currently £212 per week, or £11,000 a year. Obviously, other things being equal, that would put someone within the tax and national insurance net and therefore into the higher tapers. Someone being paid twice the national minimum wage would have to work only 17 and a half hours per week; someone on lower pay twice that long. The threshold for an equivalent couple is double that for an individual, so the family income would need to be £22,000 before they escape conditionality.

It is not clear how well those parameters have yet filtered into the public consciousness. Perhaps the Minister can point us in the direction of the equality impact assessment which covered that issue. We welcome the fact that the Government have given some assurances about easements—for example, for lone parents with young children and for those with health challenges and caring responsibilities. There is also the flexibility promulgated for ways in which claimants can increase their earnings by supposedly increasing hours or pay, changing jobs or taking on a second job. That is nice in theory but likely to give rise to all sorts of practical problems.

The vagueness around the provisions, the extent to which providers or Jobcentre Plus staff will be making the determination, and the sources of capacity and training are a real worry. Affirmative regulations are all very well, but we know that they provide limited parliamentary oversight of what is a significant change.

A number of points arise: we know from the briefing that the ultimate requirement in terms of hours or overall remuneration will be included in the claimant commitment ab initio. How will this help those who wish to have a staged return to the job market? How will employers who are able to offer part-time work react to someone whose claimant commitment accepts that they are to achieve full-time work? It seems to me that this could damage their job prospects.

The test is apparently to be on gross earnings, so where does this leave, for example, employer pension contributions? These will be a significant feature, given auto-enrolment, which we know the Government are committed to introducing next year. What capacity will there be in the system to do the appropriate kinds of comparison? These will be complicated matters.

How will this work for the self-employed? What happens if the profits of the business are slower to materialise than hoped for, margins are squeezed beyond expectations, or the business operates in a fluctuating market? If it is a seasonal business, one can see the prospect of fill-in work, but on what analysis will Jobcentre Plus or providers seek to divert individuals from the sometimes painful process—particularly in the current economic climate—of building a profitable and sustainable business? What expertise will they be able to bring to bear?

Our discussions yesterday raised a number of issues about how the work programme fits with this, as well. There seems to be a potential conflict between work programme providers, which are remunerated by sustaining individuals in work for at least 16 hours per week, and in-work conditionality, which seeks to move people to 35 hours a week, if remunerated at the national minimum wage.

It is understood that there is scope to renegotiate outcomes with existing providers, but this could be a significant change of focus. What evaluation has been undertaken of the potential to renegotiate? Can the Minister tell us what discussions have taken place with

[LORD MCKENZIE OF LUTON]
the business community and, indeed, the TUC, on how this novel interaction with the labour market should proceed?

We acknowledge what the Government are seeking to achieve, but there appear to be so many unknowns—unless the Minister can give us comfort this afternoon—that it is difficult to accept that we should give the powers that the Government are seeking in this Bill. At the least, this looks to be a case for a sunset clause. I beg to move.

Lord Skelmersdale: My Lords, first of all, I should apologise to the Committee for not being here when it last discussed this Bill on Monday, and accord my grateful thanks to the noble Baroness, Lady Meacher, for speaking to some of my amendments in a large group which was somewhat precursored—I think that is the word—by the noble Lord, Lord McKenzie.

The noble Lord, in his speech to this probing amendment, asked a whole string of questions which I am not in any sense qualified to respond to. I am able to respond to the amendment, which leaves out,

"or more paid work or better-paid work".

The object of the exercise, we all agree, is to get as many people as possible into work, through this system. The trouble is, if the words I have just quoted from lines 10 and 11 on page 7 of the Bill are left out, then once the claimant has got paid work that is the end of the Secretary of State's responsibility.

What happens if the claimant decides that the hours he is doing are not sufficient for his needs, even with the universal credit? I accept there are the pension commitments and various other commitments that the noble Lord, Lord McKenzie, spoke about. Is the claimant going to go back to the provider or to Jobcentre Plus and ask how he is to increase his earnings? If so, there is very good reason to have these words remain in the Bill. The question—

Lord McKenzie of Luton: My Lords—

Lord Skelmersdale: Can I just finish? The key question asked by the noble Lord, Lord McKenzie, is to what extent there will be bullying, by either the provider or the Jobcentre Plus officials. I hope to goodness that there will be none.

Lord McKenzie of Luton: The amendment, as I explained, was a probing amendment and was not of itself meant to be taken literally. It was the peg on which to hang the argument and this very important debate, which we should have. The noble Lord was musing about what would happen with claimants who wish voluntarily to increase their hours. There is nothing to stop them doing it, and we would all applaud that if they were able to, and to do so without further pressures on Jobcentre Plus or the providers. There is nothing wrong with that.

Lord Skelmersdale: No, my Lords. The reason I added my last sentence and prevented the noble Lord, Lord McKenzie, from rising to interrupt me was for the simple reason that the claimant may well need guidance and help in order to get the extra hours or money that he requires. Therefore, I am asking the Minister to what extent this is going to be driven by the claimant, or by the job provider, education or Jobcentre Plus. I said that I hoped it would be claimant-driven, and nothing else.

Baroness Hollis of Heigham: My Lords, I wonder whether I could add to the burden of questions that the Minister will be facing. This will appear somewhat on the tangent but, in my view, it is not, as it feeds into a lot of our other discussions and is related to work conditionality. At the moment, as I understand it, it a lone parent is regarded as being in full-time work for the purposes of conditionality or eligibility for tax credits if she is working 16 hours a week, and is then topped up. With a child under, I think, 12—although coming down to 10, seven et cetera—that 16 hours kicks in at an earlier stage. As far as I am aware—and I stand to be corrected on this—there is no point at which the lone parent is expected to increase her hours beyond that as the child gets older. With a couple, the main claimant, as we know, may claim on behalf of both. I have no objections at all in principle with expecting either claimant in a couple relationship to be available for work; and, in certain circumstances, both.

What concerns me, and what I would like to ask the Minister about, is the impression that the support papers that I have read so far seem to give: that when a child is 12, whether you are a lone parent or in a relationship as a couple, all such people must work a full-time job, which is now defined as 35 hours a week. If I understand it correctly, it could mean that a lone parent with a 13 year-old could be expected to move from working for 16 hours to 35 instead, as part of work conditionality; and a couple—a husband and wife, or two partners—with children of 13 and 15 might each be expected to work 35 hours a week. If I have understood the proposals correctly, then I would like to come back on that because I find it antithetical to everything we know about the need for children to have support. I have no problem at all with couples and the second partner, or a lone parent, being asked to find work within school hours. However, if the Minister is saying that at the age of 12, both partners in a couple, as well as a lone parent, are expected to be in what we would traditionally regard as full-time work of 35 hours-plus, then this is certainly something that we would like to revisit. I would be grateful if the Minister could help us to be sure that we have the facts right, as this is part of a wider debate on conditionality.

4 pm

Lord Kirkwood of Kirkhope: My Lords, like others, I was absent from the last sitting of the Committee, unavoidably. I was having my gardening wound attended to in a magnetic resonance machine; I think I am still radioactive but I hope it is not affecting other people.

I am in favour of these amendments. Conditionality is an important part of this and I am not sure that we have got it right, although the principle of conditionality was hammered out almost to infinity over the last two

welfare reform Bills and it is now a more or less agreed policy. That is not to say that we have not got to get some of these important questions right. The expertise of the noble Lord, Lord McKenzie, is acknowledged in this field. It was demonstrated beyond any doubt in the last two welfare reform Bills and the Committee is the better for having his experience. Having buttered him up, I should say that this debate is at risk of being incoherent. I would much rather have had a conditionality debate over a solid period without a whole list of disaggregated amendments.

I am about to lose my well established credit with the Committee because I am going to repeat myself. I was looking at this last night when I came in. The Marshalled List was substantially different and I was looking forward to an all embracing principled debate, because we all know that if you have to resort to conditionality this policy is not working. I know this because I am a director of the Wise Group, and colleagues know that. If you have to inflict penalties in big numbers in circumstances that are not clearly defined, there is something wrong that needs to be fixed further up the food chain.

I want to continue with my whinge for another moment if Members will indulge me. I am very worried that there are four or five big issues here, one of them being disability, that we are not going to give proper time to if we disaggregate the amendments to the extent they were overnight. It is not for me to tell people how they do their business and I am speaking for no one but myself but I notice how far we are down the sitting stage. I have been here before—as the noble Lord, Lord Steel, said famously in the Chamber the other day, I didn't come up the Clyde on a bike—so I see that we will end up doing three days on the trot, something disabled colleagues might find quite difficult to deal with, never mind the rest of us, to cover everything between Clause 15, which is where we are, and Clause 136.

I cannot do anything about any of this and I am willing to take part in debates. I do not want anyone to say that I am saying anything like conditionality is not important, because it is. As a matter of process, however, I appeal to all colleagues to try to make sure that we get to the important things. To be brutally honest and tell you the unvarnished truth, I want to put pressure on the coalition Government on four or five issues here. I may run out of time because we are doing things in a way that is disaggregated to the extent that it is. So I am appealing to my colleagues on all sides of the Committee—even from Rutherglen—to think carefully about that. We are having very good debates and we are getting very good responses from the Government and I make no complaint about that but we have to be realistic about making sure that we get to the really important political things in this Bill, otherwise the Committee will not do as effective a job for the House as it would otherwise.

Lord McAvoy: I thank the noble Lord, Lord Kirkwood, for drawing attention to that sort of matter because, with the exception of the first two Committee meetings, at every sitting half the time has been taken up by the Labour Opposition and the rest by others. There is no question of anything deliberate on this side; that was a clear inference. This side has taken up half the time and half the time has come from others. I do not complain because on at least seven occasions the Minister, who is extremely able and competent—I can also butter up—has had to say "I will write to you" because of the complicated nature of the questions from my noble friends on this side of the House. It is a point that the noble Lord, Lord Kirkwood, should make but I do not think he should make it to this side.

Lord Wigley: My Lords, I think that I have attended every sitting of this Committee. I find it immensely frustrating that, when one sitting ends, one finds that by the beginning of the next a wodge of new amendments has come on board. It does not mean that the points raised are not important or that there has been time-wasting. However, it is immensely difficult for people, particularly those with responsibilities to organisations outside the Chamber, to organise themselves to put the points that they need to put in debates. It is not just for this Committee but for the House to consider how to get a more orderly way of doing business.

Baroness Drake: My Lords, I support the amendment and come back to its detail; my noble friend indicated that it was a probing amendment. This is an opportunity to raise significant issues about in-work conditionality. Where a welfare system has to balance rights and responsibilities, under universal credit those in work will be embraced by an in-work conditionality of some complexity which neither they nor their employers will previously have experienced. From the emerging details of in-work conditionality it is clear that it will give the Government significant discretion over a sizeable section of the workforce, and powers to follow through with sanctions that will affect people's lives very significantly.

This is a novel discretion for three reasons. It will impact on a much greater volume of people; it will impact on existing in-work relationships; and it will require Jobcentre Plus people or any outside providers to engage with large numbers of companies with which they have previously had no engagement.

Setting and enforcing what is a reasonable condition, particularly in terms of increasing hours or requiring people to seek and change their jobs, must be sensitive to a range of factors: for example, local and regional labour markets, and different sectors and their employment practices. If an employer puts their employees on short-term working rather than making them redundant, is that a good thing or will it attract conditionality requirements? How will it be handled? What will happen when people have atypical or variable hours work contracts? Over what period and in what manner will earnings be averaged to assess compliance with income thresholds on conditionality?

In requiring people to work more hours or seek a higher-paid job, it is important to ensure that childcare and conditionality interact fairly. Parental need for confidence in the care of their children needs to be respected. My noble friend Lady Hollis moved in on some detailed concerns in this area. Any casual observation of female labour market statistics will show two peaks of part-time working by women. They coincide with

[Baroness Drake]
key caring periods. Part-time working in the UK is part of the systemic solution to childcare, particularly for single parents. One cannot look at conditionality on the one hand without looking at the nature and characteristics of childcare in the nation as a whole. How will the sanctions regime be applied? How will it impact on the children of those who are subject to sanctions? How long will people and families be given to adjust to any new requirements and conditions, particularly if they come on top of a period of compulsory redundancy?

What we see from the details coming forward is the micromanagement of the work patterns of potentially millions of people, and the application of wide discretion that will need a considerable set of guidance notes and competences to apply the conditionality. The staff making these in-work conditionality assessments will have no previous experience of doing this. It is a novel area in its scale and complexity. No doubt in answer to my questions the Minister will say what is intended or that the matter is work in progress. It is pretty clear that an awful lot of work is still in progress. I say that not to appear negative but to say that the Bill has the effect of giving the Government considerable discretionary power over people in work.

Parliament needs to be satisfied on three issues: that the capacity and capability to implement the proposed in-work conditionality is there; that there is confidence that the discretion will be applied consistently, fairly and proportionately; and that there is a high level of confidence that there will be no inequalities of treatment or impact in the outcomes of applying that discretion. Because conditionality is now going to be applied to people who believe that they are already making a contribution, they will have to experience a different perception of the contribution they should make in terms of being in work.

I want to pose two questions for the Minister. First, do the Government intend to pilot in-work conditionality before they introduce it nationally? Secondly, would any introduction consequent on those pilots be both gradual and incremental so that experience, knowledge and skill can be built up by those assessing claimants? Thirdly, what will be the reporting to Parliament about the level of confidence that this complex system of in-work conditionality can be applied fairly and proportionately?

Baroness Lister of Burtersett: My Lords, I would like briefly to follow up on that because this takes us into largely uncharted waters, so we have to be sure of what it is that we are doing. I was struck by the research report, *Perceptions of Welfare Reform and Universal Credit*, which states that:

"Many part-time workers were surprised that the Universal Credit proposition addresses them as they tended to perceive that they were already doing their bit and felt a strong sense of entitlement to tax credits".

I think that they found the idea that conditionality was going to apply to them quite disturbing. There is a real danger here. The Government talk a lot about not wanting an overly oppressive state, but I fear that many workers will experience this as just that.

I have two questions for the Minister. First, my noble friend Lord McKenzie mentioned the equality impact assessment. I understand why the Government are using earnings rather than hours as the threshold—because they want to get away from the in-work/out-of-work distinction—but in doing that, as my noble friend said, someone who can earn more will find it much easier to meet the threshold. We know from all the evidence that men are more likely to be able to do this than women, non-disabled people are more likely to do it than disabled people, and white people are more likely to do it than minority-ethnic people.

Baroness Hollis of Heigham: People without children.

Baroness Lister of Burtersett: Yes. Is there not an issue here in terms of the equality implications? How does the department see those implications?

Secondly, I know that the Minister likes evidence-based policy-making and of course will be very aware of the research report *UK Employment Retention and Advancement Demonstration*, which has found that gains are made by providing support for people to advance in work through this programme. It states that,

"the evaluation found that for specific populations, gains can be achieved, even for some of the most disadvantaged job seekers, and that those gains can be sustained over a five-year period. These results suggest that the core elements of ERA offer something to build on in future post-employment interventions".

In what way is the department building on this? To me, it seems that it is going down the in-work conditionality route instead of developing the support provided in this programme.

4.15 pm

Baroness Donaghy: My Lords, I would like to raise a philosophical point about the Government wandering into the world of employment relationships. I am not sure whether philosophy is allowed but I will have a go. Employment relationships are complex, and I am not just talking about the legal implications. A bargain is reached between the employer and the employee about how each will conduct themselves. Any external factor can easily upset the applecart. I give a hypothetical example to illustrate that. I know from being a former chair of ACAS that its helpline receives a million calls a year from both employees and employers. ACAS staff outline what avenues the caller can pursue but stop short of giving actual advice. Human nature being what it is, this is often interpreted as strong advice. If the information is used in the wrong circumstances, it can cause trouble rather than solve a potential problem.

We all sift the information that we hear, so an employee who has had a work conditionality interview, as it were, with the local Jobcentre Plus could go straight to their employer and say, "The social says you've got to give me more money or increase my hours". There may well be thousands of philanthropists out there just waiting for the opportunity to pour largesse over their employees' heads, but this situation could also lead to real difficulties in the employment relationship. Some employees are clinging on to work

by their fingertips right now. I cannot help thinking that this measure is a precedent in terms of government relations with the world of work.

I read what Chris Grayling said in the other place and it all sounded terribly reasonable. He said that "they"; that is, claimants,

"would come back into the jobcentre from time to time—periodically, every few months—to talk about their prospects, and that we would seek to put some additional conditionality on them, as and when it became possible to do so, to move to a job with longer hours".

An example was given where a lone parent could move to a job with longer hours as the children grew up. That was called,

"a degree of push within the system".—[*Official Report*, Commons, Welfare Reform Bill Committee, 5/4/11; col. 412.]

How grown up would the children have to be? Would the extent of unemployment in the area be taken into account, as the noble Baroness, Lady Drake, has asked? Is it really the Government's intention to force people to give up one job to pursue another? How would this affect self-employed people? Would they be in danger if they showed that they had made no profit in a particular year? Would they be advised to give up their business in order to take up higher-paid work elsewhere? I know from my seven years in ACAS that the employment relationship is a very delicate one. I worry about how this issue is going to be handled.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): My Lords, I wish to pick up the points raised by a number of noble Lords about how we manage ourselves in this Committee. One of the issues is that the briefings that we are supplying are arriving shortly before the sitting when we are debating the relevant matter, so that noble Lords get to see changes and new amendments too late. I will try to ensure that we run background briefings a week in advance, say, of the relevant Committee sitting rather than immediately before it. I think that might sort out some of the problems and maintain the depth of our discussions. I know that that is rather a two-edged sword, as the noble Lord, Lord McKenzie, warned me that it would be, in that supplying more briefing leads to better questions being asked, or at least more questions being asked. However, I accept that that is part of the process.

I turn to the amendment, which I understand is a probing amendment. We believe it is critical that this Bill provides the framework to apply conditionality to in-work claimants. I take this opportunity to explain exactly why that is. One of the things that I know all noble Lords from all round the Committee welcome is that universal credit will remove the distinction between in- and out-of-work benefits. That is at the heart of what we are doing here. In particular, it will remove what have been described by many noble Lords as the arbitrary hours rules, particularly the 16-hour rule in jobseeker's allowance. Under universal credit claimants will have entitlement regardless of the hours that they work. This is clearly a positive but it does mean that we may be paying benefit to claimants who are clearly capable of working or earning more. We think conditionality can play an important role in encouraging and supporting such claimants to do more to support themselves. In practice, we are looking for conditionality to take up some of the impacts that before we were relying on the separation between tax credits and benefits to provide.

The noble Lord, Lord McKenzie, raised the question of micromanagement. In our briefing on in-work conditionality, we said that we would be guided in the main by claimant choice, in particular whether claimants want to increase their work with their current employer, look for an additional job or look for an entirely new job. It is not about micromanagement of claimants' careers but about supporting and encouraging them to progress. I would turn round the evidence presented by the noble Baroness, Lady Lister, about how, with the right encouragement, people can increase and sustain their earnings, and say that this is the kind of impact that we want. Indeed, when we look later at how this is interrelated with the work programme, there are clearly opportunities in the medium term to help people improve their lives.

You only have to think about this for a few seconds to realise what the issue is. Once we have got rid of the distinction between in-work and out-of-work benefits, if there was not some kind of conditionality regime, we could get into a position where a claimant who is doing literally one or two hours of work but who is capable of working full-time would receive their benefit condition-free. This is obviously way softer than the current regime. The current regime means that you can work up to 16 hours maintaining full conditionality and losing all the extra hours. It is not surprising that not many people actually do that. That is the issue.

The question then becomes when conditionality should cease. With no break between the different benefits, there is no obvious point for this to happen. As noble Lords know, we have published a briefing note explaining how we intend to set those conditionality thresholds, and we are defining those by the number of hours we expect each individual in a benefit unit to work, taking account of their particular capability and circumstances, and multiplying it by the relevant national minimum wage. Otherwise, we are left with the tyranny of an hours rule and all the complications of reporting, testing and checking, and the intrusiveness of that, which is why we as a department have gone towards doing it in this way as a clean earnings figure.

For a single claimant who we expect to work full-time, this would give a threshold of around £210 per week. For a lone parent, who we might only expect to work 20 hours a week because of caring responsibilities, the threshold would be around £120. To pick up the point made by the noble Baroness, Lady Hollis, on lone parent conditionality, already with JSA lone parents must be available for work for as many hours as their caring responsibilities allow. If their child is in school we would expect this to be something like 20 or 25 hours. For lone parents with a child over 12 on the universal credit, full-time work will be the default as now, and we will allow limitations to this on a case-by-case basis, as required by the claimant's circumstances.

I shall pick up the point raised by the noble Lord, Lord McKenzie, on self-employment. If a self-employed claimant falls below the threshold, then we will expect them to take steps to increase their earnings and

[LORD FREUD]
reduce their dependency on benefits. How we do this will in large part depend on the claimant. If they want to focus on their self-employed business, we expect to give them an appropriate time to do this; alternatively, we may expect them to look for employment to supplement their earnings. As with all such issues, this is an area we continue to consider and develop.

Where the benefit unit earns more than the threshold amount, we will not impose work-related requirements on either member of that benefit unit. Where earnings are lower, we will have the ability to do so. This means that we will be able to impose work-related requirements on claimants working less than we could reasonably expect in benefit units falling under the threshold. We believe this is the right approach and the right way to define the cut-off point for conditionality.

In answer to a question put by the noble Lord, Lord McKenzie, I say that we have chosen gross earnings because that is easily understood and simple to assess. If we were to take off elements such as pension contributions, that would only add to the complexity of the system. That said, we are only too aware what a difficult area this is. It is worth stressing that although we will be able to impose conditionality on those in work, we will not be obliged to do so. Clearly, that is important. Although we believe conditionality can play a key role in getting in-work claimants to progress, we do not yet have a final view as to how or when this is best done.

As noble Lords clearly appreciate, there are a range of complicated issues to work through. Critically, we will need to build our understanding of what can help claimants progress—when we should require claimants to look for more work and what role other interventions, such as skills assessments or career advice sessions, can play.

I turn now to the question raised by the noble Lord, Lord McKenzie, on the work programme and the conflicts there. I can assure him that it is not the case that, by setting a higher threshold, we make the current work programme structures invalid. The programme can continue as now, looking to move claimants from being out of work into some work. Once claimants have left the work programme, we could then look to continue working with them to help them progress. We are currently considering the interaction with a future work programme and the timing of migration. That will be an area of considerable opportunity when we have the system in place and we start rolling over to the second set of work programmes.

Clearly, we need to look at the skills and training our advisers will need. Indeed, we need to consider whether there is a role for third-party providers. To respond to the noble Baroness, Lady Drake, I say that we will need to consider what we can afford in that area. We recognise that the circumstances in which we could require a claimant engaged in some work to move to a new job are particularly sensitive. We are clear that any actions that we impose will be reasonable and proportionate. We have made a public commitment that advisers will take into account other benefits of the claimant's current employment before imposing any requirement to take an alternative job. This is especially important where those benefits are particularly relevant to the claimant's circumstances: for example, where someone with caring responsibilities has an existing flexible working pattern or where someone has built up a significant pension entitlement. We are developing our proposals in this area and in due course we will provide more detailed guidance on how the system will operate in practice.

4.30 pm

We are not rushing in here. We need to take time to get the issue right. Given the scale of the issues, it may be that in October 2013 the conditionality system in universal credit will remain focused on those who are out of work. However, we may pilot options for in-work conditionality to build up our understanding. I hope that that reassures the noble Baroness, Lady Drake, about our approach in this area.

I will add that our approach as we test and examine how best to do this will not stop in October 2013. In this area there is a constantly changing and improving evidence base and I foresee constant evolution to improve the position. There will not be a sudden point where we freeze what we are doing. I imagine that it will evolve indefinitely. However, I am clear that the Bill needs to provide us with the powers to apply conditionality to in-work claimants. I hope that I have spelt out in as compelling a way as I can why we need to do that in this system. We recognise that we need to tread carefully in this new area. I hope that I have reassured noble Lords that this is exactly what we are doing. I urge the noble Lord to withdraw his amendment.

Baroness Sherlock: My Lords, perhaps I could say a word. I am sorry to intervene. However, having been to the briefing yesterday and having heard the Minister respond to the question of the noble Baroness, Lady Hollis, I cannot in all conscience let this go without pushing it further. I am particularly concerned by the position of parents with teenage children. I understand what the Minister has done. After removing the barrier and artificial threshold between "in work" and "out of work", he has been forced to compensate by reintroducing a form of conditionality for people who previously did not have it. I understand why he chose to do that. However, the big problem is the way in which it has been set. I read the notes, listened to him and went to the briefing. My understanding from what he said—I hope that he will correct me if I am wrong—is that the default setting for a parent whose child has reached their 13th birthday is that they will work full-time. That means 35 hours a week in addition to travel time. If that is standard travel time, it is up to 90 minutes each way—another three hours a day, 15 hours a week, on top. That will be 50 hours a week. If they are in the kind of job that has a one-hour lunch break, that will be an 11-hour day. Therefore, the parent will be expected to leave home at 8 am and not return until 7 pm.

I invite noble Lords to imagine for a moment that they have a teenager who has just turned 13. I have asked people I know who have or have had 13 year-olds whether they would leave them alone in the house for that period. When they had picked themselves up

laughing from the floor, they said: "No—have you met my teenager?". The general conclusion was that they would not. I asked whether they would be able to get childcare. They said: "What kind of childcare would I get for a 13 year-old?". They said, first, that it is very hard to find; secondly, that it is quite expensive; and thirdly, that it is very hard to persuade a 13 year-old to take it. My question is: do we think that that is a reasonable requirement as a default setting before we get into exceptional circumstances? I think that it is simply wrong and I would be very grateful if the Minister would either correct me or tell me that he thinks it is a good default setting.

My second question is: even assuming a lone parent or couple in this situation could find appropriate childcare, could they afford it? If they were working full-time on minimum hours, they would still have to pay a portion of that childcare, and that plus other costs could negate the gains from work. Will the Minister explain how that would be taken into account?

I have two final questions. When I worked with lone parents, I often found someone doing a 25-hour job who was underemployed for her qualifications but who had found an employer who would not sack her if she took a day off because her kids went sick. She was willing to stick it out when she could probably have earned a bit more but would have ended up being in and out of employment. Having found a job that was safe and reliable and which she had had for a few years, she was not willing to risk it by moving to slightly better paid but more insecure employment.

If she had a 25-hour job in that circumstance, and the assumption was that she had to find another 10 hours, she would then have the three choices the noble Lord set out. She could go and find another 10 hours on top of that, which would mean finding 10 hours to fit around the 25 she already has, and adding in another set of travel times to all those different bits of hours, assuming this would even work out. She would have to assume also that that job would remain stable.

When I asked the question in the briefing—and I am probably not meant to refer to this, so forgive me if I have the protocol wrong—my understanding from those who support the Minister was that in practice she would have a conversation with a friendly adviser, and they would say, "No, we totally understand, don't worry". But every time I asked, in a theoretical sense, the question, "What would happen in this circumstance?", the answer was, "It depends".

The assumption is that she will sit down with an adviser who will say, "Don't worry, we understand all of that. We understand that you have a difficult teenager. We understand that they have GCSEs coming up and you're worried they will drop out of school. We understand you're worried that he is going to get into trouble. We understand that you've got a daughter who has an eating disorder and you want to make sure she eats". That is a huge risk to take.

The final point is a more general one. Can the noble Lord tell me whether he has had discussions with other government departments about the public policy implications of encouraging the nation's 13 year-olds to be latch-key children?

The Earl of Listowel: My Lords, I apologise for coming so late into this Committee debate. Earlier in the discussions on the Bill, I referred to research in the United States which looked at the effect of parental employment on educational outcomes for children. It found that within the younger group, five to 12 or so, outcomes were better when parents were in employment, but that in the older age group—and I am not quite sure of the cut-off point—outcomes for children in school were poorer when their parents were in employment.

I do not have the details, and I am sure there is much more context to it than this. Does the Minister know what the research says about the impact of parental employment on children's outcomes at school, and is there separate research into the impact of lone-parent employment on the outcomes for children in school, post-13?

Lord Freud: The first point I make to the noble Baroness, Lady Sherlock, is to assure her that full-time is not the default setting. The default setting is that we look at the circumstances of the claimant, particularly taking into account their caring responsibilities and available care, and reach a reasonable position. That is the position. On that basis, a lot of her concerns surrounding her point fall away. Of course we are not looking to have latch-key children.

On flexible working, I made the point earlier that we understand that when we look at the value of a job, the monetary implications are not the only measure; and that the gains of flexibility, in terms of how the employer behaves, and the relationship, are key and critical factors and have to be taken into account.

Baroness Hollis of Heigham: I do apologise, as I know the Minister has taken care to answer my noble friend. Does that mean that conditionality would not apply where a lone parent or a partner in a couple with primary caring responsibilities was able to work—or felt they could or should work—only during school hours, given the suggestion from my noble friend of the situations families find themselves in? Most of us have been through that. Therefore the default position for a lone parent of a teenager or, to gender-stereotype, the mother in a couple would be that one of those two need be available for work within school hours only?

Lord Freud: No, my Lords. I am sure that the noble Baroness, Lady Hollis, knows how the legislation works. That legislation now goes up to that 12/13 point and the formal protection around school hours. However, as I explained, the default setting remains that it depends more generally on the caring requirements of that parent, whether lone or in a couple, and their particular circumstances.

Baroness Hollis of Heigham: How then do you avoid the question posed by my noble friend of latch-key children if you cannot ensure that the homecoming of the parent with primary care for the children coincides pretty approximately with that of the teenaged children?

Lord Freud: As I say, that will depend on the particular circumstances of that family. That is the point I am endeavouring to make.

[LORD FREUD]

I would like to finish with the point about the cost to the claimant of being employed. That is an issue that we are going to pick up in later amendments so I will not go into it in great detail. However, we recognise the need to take account of those employment costs, and I will pick that up more generally later.

Lord McKenzie of Luton: My Lords, I thank the Minister for his responses to a lot of detailed questions. I will just touch upon the issue of the management of our affairs. As the noble Lord has said, the proximity of briefings to Committee sittings has not helped. The situation was not helped by accelerating our start in Committee. I accept the point made by the noble Lord, Lord Wigley, that putting amendments down late in the day does not help our deliberations. I suggest—and this will send shivers down the spine of usual channels—that we ought to defer next Tuesday's sitting so we could spend the time getting on an even keel and perhaps get back to business as usual. I offer that to the Minister without any great expectation that he may be tempted by it.

I thank all noble Lords who have participated in this debate. The noble Lord, Lord Skelmersdale, posed the question of whether this would be claimant-driven or Jobcentre Plus- or provider-driven. I understand, and I think the Minister confirmed, that this goes into the claimant commitment right on day one. There might be a discussion around that but it is something that is very much going to be driven by Jobcentre Plus or the providers.

4.42 pm

Sitting suspended for a Division in the House.

4.55 pm

Lord McKenzie of Luton: My Lords, I was responding to the Minister's reply and saying that I am sure we are all glad to hear that there is no intention to rush into these things. Perhaps I may say to the noble Lord, Lord Kirkwood—when he is in his place—

Lord Kirkwood of Kirkhope: He is behind you.

Lord McKenzie of Luton: It is always good to know that the noble Lord is behind me and I thank him for his kind words. I want just to say, on the nature of our debates, that we could have had a big debate around conditionality as a whole, but in Committee surely what we should be doing is going line by line through this legislation, challenging and probing it in order to try to understand its full intent. But even in itself, in-work conditionality is a new and big topic, as a number of noble Lords have said.

The key issue which has emerged is: what is the default position in respect of lone parents with children aged 13 or older? Certainly our understanding from the briefing is that the default position would be the 35 hours national minimum wage. If the noble Lord is now in a different position on that, or perhaps we have misunderstood it, it would be good if that is put clearly on the record. That would deal with the points made by my noble friends Lady Hollis and Lady Sherlock. However, in their different ways, my noble friends Lady Drake, Lady Lister and Lady Donaghy have pointed to the newness of and some of the risks and challenges posed by issues around capacity, how the discretion is going to be exercised and what it does to the employment relationship. We are in uncharted waters and these are issues of real concern.

In respect of using gross earnings, I did not object to this and I understand why that might be the basis on which it would be done. I said simply that where there are other features of someone's employment terms, particularly employer pension contributions—someone might have lower pay but a good employer pension contribution—to try to force them away from those would not make any sense. I am sure that is not necessarily in the Minister's mind, but those sorts of issues are associated with the capacity that is needed to make these evaluations. They would mark a departure for Jobcentre Plus and providers.

We remain concerned about providers. I understand that we may be close to negotiating the next round of contracts and that it can be addressed in those, but I think we would hang on to the point that, as it is currently structured, there is the potential for real conflict where providers are remunerated on getting people into work—at least 16 hours a week, I think—and keeping them in work. What in-work conditionality will do, if the noble Lord says it has to be done outside the work programme, is take people off that scheme, possibly before they have enabled the provider to earn their full remuneration for keeping them there long enough. It is those sorts of conflicts with which we have some difficulties.

I think that we have given this a good airing. I hope that we have put down a marker about our concerns, and certainly our concerns about taking up a framework for legislation. We know that this type of legislation inevitably has a framework basis to it, but with something so unformed and in many respects as vague as this, it is quite difficult for us to say that we will support it. That is why I return to my point that we may look for some sort of sunset provision here in order to see how it all works out in practice. Having said that, I beg leave to withdraw the amendment.

Amendment 51CDZA withdrawn.

Clause 15 agreed.

5 pm

Clause 16: Work preparation requirement

Amendment 51CDA

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

51CDA: Clause 16, page 7, line 23, leave out paragraph (b)

Lord McKenzie of Luton: I shall speak also to Amendments 51CEA and 51CDB. I start with the latter. This started out as a simple probing amendment, but the more we looked at it, the more we considered

that it had wider implications. Clause 16 deals with work preparation requirements. A claimant can be subjected to work preparation requirements if they have limited capability for work. A limited capability for work is defined in Clause 38 and will be determined in accordance with regulations. For a start, can the Minister confirm that the regulations will reflect the work capability assessment as updated by the Harrington reviews? We will of course have an opportunity to discuss this in greater depth when we reach the clause, but for the present, our understanding is that universal credit will adopt existing and emerging criteria which, among other things, differentiate between those with limited capability for work and those with limited capability for work-related activity. The latter would currently fall into the support group for the purposes of ESA and not be subjected to work-related requirements of the universal credit by virtue of Clause 19. Those not falling into either category would currently fall within the scope of JSA and, for universal credit purposes, be subject to work search and work availability requirements. Claimants under the universal credit subject to work preparation requirements cannot be subject to any other work-related requirements—other than a work-focused interview, of course.

The issue we probe is the nature of work placements, of work experience and the extent to which that encompasses activity currently accepted as beyond work-related activity or work preparation and is equivalent to the world of work. In short, is the Bill extending what have hitherto been the boundaries of work-related activity? Clause 54 suggests that it does, as, for ESA purposes, it adds work placements and work experience to the definition of work-related activity in the Welfare Reform Act 2007. Why is that change proposed? The WCA process seeks to differentiate between those currently fit for work and those who are not but who can move closer to the labour market. Can the Minister give us more detail of what is encompassed within work placements and work experience and the essential difference between those and work itself? We are aware that mandatory full-time work experience was to be tested as result of the provisions of the Welfare Reform Act 2009, but those provisions related to those required to meet the jobseeking conditions. Has any testing being done with those not subject to the JSA regime; and, if so, under which provisions? Is it envisaged that work placements and work experience will be time limited? If so, what time period is envisaged?

How will that operate within the work programme? Are providers currently precluded from imposing work placements and work experience on those not subject to the JSA regime? Does work placement for 16-plus hours a week which goes on to become a more permanent job count towards the outcome for which providers are remunerated? Can the Minister confirm that the same type of protection for, say, lone parents and those with caring responsibilities will be applied for work preparation requirements as for those who are subject to all work-related requirements?

What assurances can the Minister give that activity to meet work placement requirements will not squeeze out opportunities for claimants to attend skills assessments and to undertake training? What sort of quality assurances will be sought by Jobcentre Plus or providers in respect of those offering work placements and work experience, especially to avoid a constant churn of individuals in place of permanent paid jobs? I look forward to the Minister's reply.

Having said that, I have not spoken to the other two amendments in this group—Amendments 51CDA and 51CEA. These are both probing amendments as well. As we have noted, Clause 16 is concerned with work preparation requirements and in individuals subject to such requirements if they have limited capability for work. The requirement is for them to undertake particular actions. Included in the actions that might be specified is "improving personal presentation". It is presumed that this would encompass such activities as CV writing and presentation skills but we wonder if the Government have anything else in mind.

Clause 17 refers to "work search" and Clause 17(3)(c) lists as one of the actions which might be specified,

"creating and maintaining an online profile".

The briefing pack indicates that this is to facilitate job matching and making applications. It says:

"We expect that the new IT systems underpinning Universal Credit will support effective monitoring of work search activity. We expect to establish an online portal where claimants can set up their own 'profile'. The system will provide claimants with access to job vacancies (including jobs automatically matched to the claimant's profile) and the ability to … search for work and we anticipate the system will provide advisers with information and updates as to what the claimant has done".

What training will be available to support claimants who will be less adept at using this technology to ensure that they have equal access to job applications? I beg to move.

Lord Wigley: I shall speak briefly in relation to the third of the amendments that has been put forward to Clause 17—that about, on page 8,

"creating and maintaining an online profile".

I can see the merits of having that available but it might become an imposition. Many people who may be looking for work would be scared stiff of that approach, particularly the older ones or those who have restricted abilities. To be imposing or suggesting that this is a requirement surely should not be written into the face of a Bill. I would be glad to hear the Minister's justification for it.

Lord Freud: My Lords, not all claimants will be required to carry out all or indeed any of the actions listed in these clauses. They are meant as illustrations of the type of actions that may be imposed. Taking "improving personal presentation" first, we already require this of jobseeker's allowance claimants where their appearance is proving to be a significant barrier to work. Advisers handle such cases sensitively and directions are used sparingly and as a last resort. It is not about impinging on an individual's basic right to express themselves with their appearance but, where a claimant is actively putting off potential employers, such as with poor personal hygiene or turning up to interviews with holes in their clothes, we need to be able to address it.

On work experience and work placements, I would like to emphasise how valuable these can be as an opportunity for claimants to experience all aspects of being in a work environment, to develop skills and

[LORD FREUD]
confidence in preparation for future employment or further work preparation, and to improve their CV and marketability to employers. This is particularly important for jobseekers who have limited or no experience of the workplace. For many it represents the main barrier preventing them from getting a job.

For claimants who have limited capability for work, we believe that appropriate work experience and work placements can help them to understand more about their career options and skills, increase confidence and provide valuable experience that they may need to get started in a job in future. The amount, duration and timing of any work experience or placement will be tailored to the needs of the individual and will not necessarily be more demanding than other actions they might be expected to take to prepare for work.

These activities could take many forms and do not need to be full-time; for example, work shadowing could be suitable for some claimants with limited capability for work. We want to ensure that claimants in the work preparation group can access valuable support and experience that could help them move into work in the future. To do this, advisers need to have the flexibility to specify the actions that they think give a claimant the best prospects of moving towards employment and be clear that in some cases this may include work experience or a work placement.

Finally, as you know, we are developing our own online service that will enable the claimant to create and maintain a personal profile, complete job-search activity including automatic job-matching when new vacancies are registered, and apply for jobs. We intend that this information will be available for the department to monitor the claimant's activity and assist in checking compliance with their claimant commitment. There will be robust data protection, security and privacy measures in place; for example, claimants applying for jobs would remain anonymous from employers and recruiters until they accept an invitation to interview or contact them directly themselves. Access to jobseeker records by DWP staff will continue to be audited and existing user restrictions and business needs will determine which members of staff can see customer data.

It would be a waste of investment in a quality service for claimants, and severely hamper our ability to monitor compliance, if we were not able to require claimants to use the system. However, taking out this requirement would apply not just to our system, but to other online job-search sites. Increasingly, as many employers only recruit online, it is critical that claimants engage with online services that increase their chances of finding and moving into work. Of course, if a claimant is in the minority who cannot use or be helped to use online services, or if there is another compelling reason, this requirement will not be imposed. I hope that gives the noble Lord, Lord Wigley, some small reassurance.

Lord Wigley: Before the Minister sits down, perhaps I may press that a little further. I am interpreting what he says as implying that there might be circumstances where someone refuses to use the online system and could lose benefits as a result. Is that the case?

Lord Freud: My Lords, clearly there are circumstances where the main barrier to an individual getting work is an inability or reluctance to interface with online systems. They may need some pressure, because people sometimes do need pressure. We find that mandatory processes get much higher outputs that voluntary ones in many cases. In those circumstances, I can imagine that outright refusal could earn a sanction. However, it will not be used in circumstances where clearly it is not appropriate or where there is a genuine inability to use those services. On that basis, I urge the noble Lord to withdraw the amendment.

Lord McKenzie of Luton: I am grateful to the Minister for his explanation but I would like to press him on a few points. I share the concerns of the noble Lord, Lord Wigley, concerning the online profile. The Minister said that this would not be imposed on somebody, but if it is going to be such a valuable tool to help people into the labour market there is still the residual question of what support is going to be given to people who do not have the innate ability.

Lord Freud: At the risk of the noble Lord, Lord McKenzie, saying that we have not developed the whole system, I should say that it has not sprung, like Athena out of Zeus's head, fully formed.

Baroness Hollis of Heigham: It makes a change from Aphrodite.

Lord Freud: Aphrodite was in the seashell. I think Athena was the daughter of Metis, who was swallowed by Zeus, but there we are.

We are working really intensively now to get the customer interface with our IT system for the universal credit right. We are spending a lot of time on the support that we will be providing for that and the categories of people who cannot be expected to do it themselves but need other ways of being helped. In practice, we will wrap this up with the much bigger exercise.

5.15 pm

Lord McKenzie of Luton: I thank the Minister for that and I understand his explanation of personal presentation. However, I press him on issues of work experience and work placement, because I do not believe that he Minister dealt with the question I posed about Clause 54, where an amendment to the Welfare Reform Act 2007 states:

"The reference to activity in subsection (7) includes work experience or a work placement."

That adds something to that description, which presumably is done for a purpose. We would all, I am sure, recognise the benefit of work experience and work placements; but the issue is the extent to which those people who have limited capability for work, but are capable of work-related activity, can be caused to undertake them. That would be a departure from the current position. Are those part of what ESA claimants can be encouraged to do? I am trying to understand what the distinction between those and work is. When we debated issues of work for benefits under, I think,

the Welfare Reform Act 2009, we debated workfare and the benefits or otherwise of all of that—generally otherwise—and the extent to which that was close to or tied up with work placements and work experience. If those issues relate to those who are fit for work, that is one thing; but is there not a risk that, under this legislation, we are importing that into another group, after those people have gone through the WCA assessment? That is my concern.

Lord Freud: My Lords, clearly preparing for work shades across a number of aspects. Perhaps the most interesting area here is the way that some work providers in the work programme actually help people. One of provider actually sets up the whole experience of work in its own operation. The actual experience of work for people who are in the WRAG group, if it is properly controlled in terms of work experience and work placement—I know the noble Lord will have concerns on this—and does not become a work substitute, is part of the building-up for that person; just as developing some skills would be. That could be an immensely valuable stepping stone for people, and that is the stepping stone we are aiming to introduce in this legislation.

Lord McKenzie of Luton: I understand that point, and I think we share an understanding of the benefits of those sorts of arrangements. However, we are here introducing a term that has hitherto largely been attached to those who are in work, without any protections around it. In so far as work placements can effectively be the same as work—at least at one end of the spectrum—what is to stop providers putting people in the WRAG group through that process, and thereby effectively causing them to work, when the designation under the WCA is that they should not be in that group?

Lord Freud: My Lords, I cannot write in protections today but I give the assurance that this measure is intended to be a building block for the individual, not a substitute for work. I will think about how we can make that absolutely clear to offer comfort in that regard. I might be able to do that through a formal statement. I want noble Lords to be absolutely clear that this measure is a supportive element. It is not designed to be anything but supportive in allowing the claimant to take key steps to get back into the workplace.

Lord McKenzie of Luton: I thank the Minister for those comments and look forward to a fuller response on the protections later, as I remain concerned that we are opening a gate as regards people not being required to undertake work. This is effectively a step in that direction, if not in some instances a step into it. There are issues about how those protections might be organised. If we are going down the route of work placements, what assurances do we have in respect of providers of those work placements that they are not simply using this measure to churn staff and not do what they should do, which is to employ them properly in the first place? However, perhaps those issues can be dealt with further down the track, given that the Minister has given an undertaking to see how he can provide us with assurance in that regard. Having said that—

Lord Wigley: Before the noble Lord withdraws the amendment, which I suspect he was about to do, I return again to the provisions in Clause 17. They really are draconian. We have not only the provision highlighted in paragraph (c) of subsection (3),

"creating and maintaining an online profile",

but paragraph (f) states,

"any action prescribed for the purpose in subsection (1)",

which could be anything at all. To give these powers without some strong safeguards on the way on how used fills me with absolute horror. With respect to the online profile, that states that there can be an order for the person seeking work requiring him or her to create their own online profile and to maintain it. If they are either incapable of creating it, or are not diligent in maintaining it, they could lose their benefits. This would not be a problem for my four year-old granddaughter's generation, as they pick up this technology easily, but I know of teachers approaching retirement age or perhaps losing their jobs who would be incapable of doing this on a computer. To make that a requirement in the Bill strikes me as absolute nonsense. Surely, this measure should be looked at again.

Lord Freud: My Lords, let me just—

Baroness Hollis of Heigham: Soothe fears.

Lord Freud: Yes, soothe fears but also put this matter into context. We are essentially importing the existing arrangements, subject to the work experience issue that the noble Lord, Lord McKenzie, raised. We have drawn up an illustrative list. The noble Lord, Lord Wigley, referred to a draconian power. That is the structure that we have imported into this Bill. That structure has been debated thoroughly by many noble Lords in this Room over a number of Bills, so we are not trying to do anything dramatically new here, albeit with a nudge towards work experience. I said to the noble Lord, Lord McKenzie, that I would make absolutely clear what the protections are and how we intend to run the system. I think that the noble Lord, Lord Wigley, is looking at the whole thing as if it was a dramatically new and draconian way of doing things, but it is not. We are importing the existing methodology into the context of the universal credit.

Lord McKenzie of Luton: My noble friend says that it is all my fault; I am not sure I ever introduced anything like this, but perhaps she did.

The key issue here is that the requirements are not necessarily blanket impositions on individuals, and where that they are particularly beneficial there is support for those who are not able, without that support, to benefit from them. Otherwise they could be excluded from some job opportunities.

We have given these amendments a good run through. I look forward to the follow-up from the Minister, but beg leave to withdraw.

Amendment 51CDA withdrawn.

Amendment 51CDB not moved.

Amendment 51CDC

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

51CDC: Clause 16, page 7, line 28, at end insert—

"( ) The actions and time specified under subsections (2) and (3) shall be determined following consultation with the claimant, and shall take account of any activity already undertaken which contributes to gaining experience, skills and aptitude for work."

Lord McKenzie of Luton: My Lords, I will be brief. The amendment is intended to ensure that actions taken by or on behalf of the Secretary of State relating to work preparation requirements are determined after consultation with the claimant, and take account of activity the claimant is already undertaking which contributes to gaining experience, skills and aptitude for work.

Reflecting on our deliberations at the last Committee sitting, I should stress that this should involve consultation. It does not have to be a process of agreement, although hopefully it would be. This has special relevance in relation to volunteering. For example, we have had material, as I am sure other noble Lords have, from an organisation called Catch22, which refers to its intensive volunteering programmes with young people. They contribute to preparing young people for work.

We acknowledge that Jobcentre Plus should not be required to take account of every pastime or whim of individual claimants, but structured programmes, such as the volunteering opportunities identified, appear helpful. It must be better to work with the grain of such activity. That is all that the amendment seeks to achieve. I beg to move.

Lord Freud: My Lords, work preparation requirements will be imposed only where it is appropriate in the circumstances of the claimant. This will always involve a discussion between an adviser and the claimant, to determine any barriers to work and the steps required to address them. Where a claimant has already taken steps to improve their experience, skills and aptitude for work, this will of course be reflected in the requirements placed on them.

We will ask claimants only to do things that we believe will make it more likely that they will move into work. Asking them to go on a course to gain skills that they already have, for example, would be a waste of the claimant's time and, indeed, of our scarce resources. We therefore agree with the spirit of this amendment. We disagree on whether it is necessary to put it into primary legislation. We do not have provisions of this kind in legislation now, and, similarly, we do not think it appropriate for universal credit.

On the volunteering point, clearly we have expanded or enlarged the opportunity for work search claimants to volunteer, as long as it does not affect their ability to continue to search for work. I therefore urge the noble Lord to withdraw this amendment.

Lord McKenzie of Luton: I thank the Minister for his reply and will certainly withdraw the amendment. One point pressed on us was that if there is a recognition that volunteering programmes can be beneficial, perhaps that could be recognised by Jobcentre Plus in the other programmes that it is structuring for individuals. There have been suggestions that sometimes people slip out of volunteering programmes because they cannot keep the commitments, because they have work-focused interviews or other mandatory activity.

Lord Skelmersdale: My Lords, perhaps I might interrupt here as I am interested in volunteering, having been a volunteer in various fields myself, as I suspect most of us in this room have at one time or another. Volunteering strikes me as a way of getting work experience—not necessarily but it could be—and therefore is to be most definitely applauded.

Lord McKenzie of Luton: My Lords, I agree with that and I am sure that we all would. I suppose it depends a little bit on the precise programme and activity, but the point is not to lose that opportunity for individuals who are already undertaking it because Jobcentre Plus is imposing other requirements with clashing commitments, meaning that people have to drop out of the programmes. That was a particular point that was pressed on us. I beg leave to withdraw the amendment.

Amendment 51CDC withdrawn.

Amendment 51CE not moved.

Clause 16 agreed.

5.30 pm

Clause 17 : Work search requirement

Amendment 51CEA not moved.

Amendment 51CEB

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

51CEB: Clause 17, page 8, line 29, after "locations" insert "which shall include consideration of the length and expense of the claimant's travel"

Lord McKenzie of Luton: My Lords, I shall speak also to Amendments 51CEC and 51CEE in this group, which probe Clauses 17 and 18. These clauses cover claimants who are subject to all work-related requirements. Clause 17 deals with work search requirements, Clause 18 with work availability requirements. Clause 17 sets down actions which the Secretary of State can require of a claimant, and also limitations that can be placed on those actions. Such limitations can include restrictions to work in particular locations. Our amendment requires the limitations to specifically include,

"consideration of the length and expense of the claimant's travel".

A similar issue arises in respect of the work availability requirement.

As we discussed, the conditionality applies to those out of work and also to those in work. Our briefing note suggests that regulations will make the default position that claimants should look for work that is within one and a half hours' travel time of their home.

This makes a handy headline in the national press to show how tough the Government are on the growing numbers of unemployed. I understand also that it reflects arrangements under the existing JSA regime, after a period.

For a start, we contend that the limitations should have regard to cost as well as journey times and that this should be reflected in the regulations and spelled out in claimant commitments. One and a half hours each way is about the time of my journey to Westminster—oh, for the ministerial car—at a cost of more than £100 a week. Individuals on low pay with no long-term job security would not necessarily be in a position to get the cheapest tickets even if the best deals were readily discernible. Of course, the cost of travel from home to work has to be met out of taxed earnings. Journey times will not always be regular, especially in rural areas. They are not inevitably aligned with the hours of a job: five minutes extra at work can mean an hour's wait for the next bus. It is understood that the Government recognise the need for flexibility in these matters but see the non-application of sanctions as the route to providing it. Is this correct and, thinking about it, is it an appropriate way to proceed?

We get an insight into how the Government are dealing with this by looking at the illustrative claimant commitment that has been provided to us. Jack Smith's job goal is to be secure in work as a plumber, earning at least £8 an hour, full-time, within one and a half hours of his home. It also says that if he does not find this kind of work within eight weeks, his job goal will be reviewed and he may be required to widen it, and presumably widen his travel times as well. There is no recognition that cost could be an issue, but the prospects of widening the job goal are included in this illustrative claimant commitment.

Perhaps we may ask what the Government intend on this. It brings us to a wider point. The Government have argued the case for universal credit in terms of simplicity and demonstrably ensuring that people are better off in work. We recognise that it is difficult to have a system that inevitably has some national parameters, so our amendment is an individual underpin that ensures that no one can be made worse off under these provisions by taking up any particular paid work. Clearly, regulations would have to flesh out some definitions of "worse off", but the calculation would have to encompass costs as well as income, particularly costs around childcare and caring. I beg to move.

Baroness Hollis of Heigham: My Lords, I support my noble friend in particular on Amendment 51CEC, which is about the cost of travel. Too often and too easily we assume a London model, with the Tube, regular bus services and so on; although even there, lone parents may find it difficult to access work in the way that they would like. However, in a county like Norfolk, where many villages have a bus service twice a day, you have a very different story. In Norfolk you have some of lowest wage rates and some of the highest car ownership rates in the country; but those cars are battered, second-hand jalopies, which are taken by him to get to work, leaving her—usually—with the children and finding it very difficult to do anything except use a bicycle. The result is that it is very difficult for the second earner in a family, or—even more pertinently—a lone parent, to cope with travel to work if there is no job available for her in the local village.

We are expecting a lone parent to work 20 to 25 hours per week. She has two children, one of whom has to be delivered to a childminder and the other to the local school, but she has no transport apart from her feet. Finally, after that, she has somehow to get to a job of her own, and she has to do that again at 3 pm or 3.30 pm. It is almost impossible to find a job between those two hours in the locality, let alone further afield, given that she has to allow for her travel time. I remember one lone parent telling me that she calculated that the school bus picked up the children of the next-door village 40 minutes earlier than it picked up the children of her village; so she used to walk her child about two miles to the next-door village in order to put the child on the school bus, which would act as a form of childminder. That lone parent, with a great deal of ingenuity, managed to get to her job for its 9 am start. She was able to do so because the two villages were within walking distance of each other, but there is a real problem here. I think those of us who live in London or cities have no sense of just how isolated those villages can be.

However, the work requirement will apply to women, both lone parents and second earners, in a situation where there is no public transport, no private transport, a bicycle that you cannot actually take a small child on—let alone two children—except with some degree of difficulty and therefore there is only feet. I suggest to the Minister that it requires enormous juggling skill even to hold down a part-time job. Sometimes the job centre that the person has to travel to is not even in the whole of a rural district but may be 20, 30 or 40 miles away. I hope that job centre advisers will take all that into account when deciding what is reasonable for that lone parent or woman—and it is usually the woman who is the main child carer—in that situation. I ask the noble Lord to be sensitive to those issues, not because there is any lack of commitment but because of the sheer, simple, practical, logistical difficulties such women may face.

Lord Wigley: Perhaps I may add briefly that I identify totally with the rural dimension that the noble Baroness has just described. A bus twice a day would be a luxury in many villages in rural Powys and other parts of rural Wales. If a person has been lucky enough to have a job and a lift to work from a colleague, but the job comes to an end and they have no independent transport of their own and are required to go some distance to fulfil their obligations under the Act, that would be totally unreasonable. I would be glad to know what guidance the Minister will give to people who are trying to implement the Act on how to deal with circumstances such as those.

Baroness Sherlock: Perhaps I may ask one question. The noble Lord will be aware of this issue. We have heard about it from many claimants and I am sure that other noble Lords have had similar experiences to mine. At least one organisation that works with lone parents has complained to me about cases where lone parents have been sanctioned for failing to take

[Baroness Sherlock]
jobs. They were confident of the veracity of the accounts they had been given, and it was clear that the claimant could not possibly have made it to the job and taken their children to childcare. There did not seem to be any malice involved, but the adviser did not understand what was involved in trying to get two or more children to different kinds of childcare in very tight timescales, in a context where being a few minutes late can mean either that you are fined by a nursery or that your child's place is given to somebody else. How will the Minister protect claimants in that situation? Will he make sure that the guidance is sufficiently clear?

I am concerned because, as I understand it from our briefings, decisions like that can be challenged and referred to another adviser, but the only independent recourse a claimant has if the decision goes against them is to refuse to take the job, be sanctioned and then go to a tribunal to challenge it. This is not efficient. I quite see that it is not the Minister's intention, but how can he reassure us and those claimants that they will not be in that position?

Lord Freud: My Lords, I start by expressing a degree of envy at the ability of the noble Lord, Lord McKenzie, to commandeer a ministerial car in the past. In these straitened times I am reduced to a bicycle. However, in case noble Lords are anxious, I can confirm that the Ortleib pannier manages to contain a ministerial Box—and I have two panniers.

Turning to the amendments, as noble Lords know, we recently announced that jobseekers will be expected to look for suitable work within a 90-minute commute from their home. This is the default position in jobseeker's allowance at the moment. The intention is to ensure that claimants search in a sufficiently wide geographic area while keeping the requirements reasonable. The old position was that JSA claimants could restrict travel time to 60 minutes, but only for the first 13 weeks and only if they had a reasonable prospect of work. Otherwise, the 90 minutes of travel time did apply. Therefore, this is not a huge change, although I understand the challenge that the noble Baroness, Lady Sherlock, has given me when she said that the existing system could operate a little better. I accept that challenge. Our briefing note on the work search and availability requirements for universal credit explained that this would continue to be the normal position for claimants. However, we also explained that limitations will be applied to the work that a claimant has to look for to take into account any relevant circumstances, particularly childcare. For example, we are clear that a claimant who is the lead carer for a child under 13 need only look for work that will fit around school hours. This would include any necessary travel time.

A claimant with young children may be asked to take a job 90 minutes away, but only if the job had working hours that allowed the claimant to get the children to and from school and still get to work on time. Similarly, if a commute of any time up to 90 minutes is too far given caring responsibilities or health issues—for instance, the need to stay close to a child with ill health—we would be able to take that into account. Picking up the point made by the noble Lord, Lord McKenzie, about the widening of the job goal, that is not intended to refer to a geographic or time widening, but refers to the type of work and remuneration. The travel time remains at 90 minutes.

5.45 pm

On the cost of travel, like other costs of employment, we recognise that to be an important consideration for some claimants. The extent to which the costs are a problem and could reasonably prevent a claimant from taking up work will vary from case to case. A key question with costs is whether they are affordable. Where claimants have concerns, we would obviously want to discuss those with them and help to identify ways to access additional financial support—for example, to cover any one-off costs. As noble Lords know, Jobcentre Plus has a flexible budget for exactly that kind of thing.

With any costs, the question of whether they are reasonable depends on the job itself—how much it pays, whether it is a permanent or temporary position and the opportunities for progression. The circumstances of the claimant are of course important. For some claimants, the wider benefits of moving into work, including the positive impact on the claimant's health or any children in their household may mean that taking employment is the right thing to do even where the costs outweigh the benefits on a strict financial assessment—at least initially. We all know that many youngsters move into work to build up their experience and that their payment rates are a secondary consideration.

I am not in a position to give the noble Lord, Lord McKenzie, a blanket assurance. To be honest, this is a slightly overambitious request given that we are moving from a position where the chaos of the benefits system meant that in many cases work was simply not worth doing to a structure where, in principle, it will be. We are looking at oddities. To look for blanket protection in a system that is basically much better structured is asking for a bit too much.

Given the variety of factors that need to be taken into account in assessing whether the costs of employment are reasonable, we think it more appropriate to consider these on a case-by-case and job by job basis. Where a job is identified within 90 minutes of a claimant's home but the costs are a concern to the claimant, they will be able to discuss that with an adviser, but they must push ahead with an application or accept the job offer. Our aim is to put in place a system that allows a balanced view to be reached, weighing the costs of moving into work against all the benefits of work for the claimant. This is broadly the process in jobseeker's allowance now. JSA regulations require advisors to consider whether the costs of travel are disproportionate when assessing whether a claimant has good reason for refusing a job offer. We are considering carefully the regulatory framework that we want to put around that under universal credit, but we recognise that it is an important issue and we hope to provide further information shortly. I urge the noble Lord to withdraw his amendment.

Baroness Hollis of Heigham: I have just a query for the Minister. What he is saying is wise. He understands that we fully support both the principle of UC and the

continuum between not being in work and being in work. There is no dispute between us. However, I worry about the huge area of responsibility and effectively discretion that will fall on first level Jobcentre Plus staff. As my noble friend said, no one doubts their goodwill or that they will do the best they can. However, given the centralisation of Jobcentre Plus offices, the fact that staff are often young and that the office may be in a town or city with a substantial choice of jobs compared to rural areas, from my experience they will often have very little understanding of the difficulties experienced in a rural village where the only jobs may be part-time cleaning, childminding if you are lucky, picking mushrooms or cleaning caravans. Those are the options, and none of them would fulfil the work conditionality without serious travel that would impede people's capacity to look after their children and meet school hours.

I say to the Minister, in capital letters, that so much of the effective delivery of what we all want will rest on the shoulders of junior staff: AOs, with luck supervised by an experienced EO, working in local offices and living some 40 or 60 miles away from the circumstances of an individual in a rural village of which they will have no knowledge. I do not know how far the Minister can go in giving assurances. Of course he will want the best possible training, but I am worried about this. Perhaps the answer will involve intensifying supervision and scrutiny by more experienced senior officers at the review level—the EO level—to make it more possible, so that this does not migrate upwards into the tribunal system that my noble friend identified. We have picked up this problem in the past, and it will become more acute as more people are brought into the conditionality realm. So much will hang on the experience of the staff handling their applications.

Baroness Sherlock: Perhaps I may clarify something. I may have misheard the noble Lord and I apologise for delaying the Committee. Did he say in his response that there might be circumstances in which somebody would not be better off, but that they should take a job anyway? I see that he did. I will quote from the right honourable Iain Duncan Smith, the Secretary of State for Work and Pensions. In his introduction to the Green Paper he referred to people of working age and stated:

"We will help them to find work and make sure work pays when they do. They in return will be expected to seek work and take work when it is available".

Was that not the contract he laid before the British people? What the Minister said appears to contradict it.

Lord Freud: I will pick up on that last point from the noble Baroness, Lady Sherlock. There may be special circumstances. There are no blanket absolutes about taking a job.

5.52 pm

Sitting suspended for a Division in the House.

6.03 pm

Lord Freud: My Lords, I was finishing my response to the noble Baroness, Lady Sherlock. We are fixing a broken system in structural terms so that the benefit system which currently does not reward work will now do so. There will be a consistent taper and more generous disregards, so this is a big move. One can overcomplicate it but that is a sterile debate which we do not need to go into.

I shall turn to the question raised by the noble Baroness, Lady Hollis, on the importance of how skilled Jobcentre Plus advisers are. This is an important point and one that the noble Baroness will have recognised from her time in the department. We are now positioning Jobcentre Plus advisory services as a profession with a clear career path, accredited learning and ongoing professional development while delivering to a set of standards recognised as best in class. The learning programme for Jobcentre Plus advisers is regularly updated to reflect changes in policy. This ensures that they have up to date skills to deal with any claimant interaction and supports them in making relevant and appropriate decisions in individual cases.

We are making sure that a range of supportive products, guidance, assessment tools and management frameworks are produced to assist understanding and aid delivery of a more personalised service. As I said the other day, the satisfaction of claimants is now running at 88 per cent, and clearly the objective is to get that figure as high as we possibly can.

Lord McKenzie of Luton: My Lords, I thank the Minister for his reply, and all noble Lords who participated in this short debate. I think he would have heard the issues about difficulties with travel and costs from my noble friend Lady Hollis, my noble friend Lady Sherlock, and the noble Lord, Lord Wigley. We take the point that these things need to be looked at on a case-by-case basis, and that there will be elements of discretion and judgement in that, but my noble friend Lady Hollis pressed on the issue of training. I do not know how hot the news is that the Minister has just given us, but the professionalisation of Jobcentre Plus is to be welcomed. Is he going to tell me that he started this a couple of years ago?

Lord Freud: It is not that hot.

Lord McKenzie of Luton: It is a good move, because it is important. However, I do not think I can let the noble Lord get away with the constant assertion that the current system that they are seeking to replace by universal credit does not reflect the fact that work can pay. Overwhelmingly, is it not the case that it does? It may be that a very complicated calculation has to be gone through in order to prove it. I accept entirely that simplification of how to deal with the in-work, out-work issue is to be welcomed and is something we support. However, I do not think it is right to say that, overwhelmingly, work under the current system does not pay.

I would hang on to the point that if there is to be discretion in the system, then why is there not protection at the individual level so that someone cannot be forced to undertake work that would make them worse off? Is there going to be some reassurance at the individual level? There can be regulations which have appropriate caveats around timing issues; it is not

[Lord McKenzie of Luton]
beyond the wit of the Government to do that. In all of this change and uncertainty which still has to be resolved in many areas, would it not be reassuring to individuals that if it was clear that they would be worse off, they could not be forced down a path? That seems entirely reasonable to me.

Baroness Hollis of Heigham: I wonder if I could come in on this. I absolutely see the dilemma and I can quite understand why you may want someone to start in on something in the hope and expectation that a year down the line, that entry into low-paid work will have paid off. I put it to the noble Lord—I think he might be horrified by the possible complexity of it, but I have been looking at the additional material and trying to get my head around how disregards work—that the disregard is relatively modest for a single young person. I wonder, following the point made by my noble friend—I can see already that there may be too much downside to this and the arguments against it—whether the Minister could look at the issue of whether in such circumstances you could adjust the disregard to ensure that, even where it does not appear to pay, you could construct it so that at least someone is not worse off through working until the point at which the hoped-for job progression that we all want to see has taken them into the pathway. I would ask the Minister to take this away. It may be that this is too complicated, but making someone worse off is going to be hard to defend, is it not?

Lord Freud: My Lords, the best answer I can give on the whole area is to encourage us to wait until we get to the piloting powers before we have this debate. Let me explain it. We want to test every aspect of this system on a continuing basis. Rather than having a debate about whether we should make this little change, make that little change, do this or do that—we all like to design a system—I think the way to develop this system, which will not and cannot be perfect on day one because it is just too tough, is to have a process of constant improvement. That is my real answer. We should have the constructive debate on these issues when we get to the clause—I forget which one it is, but it is not very far away. I do not think that we will arrive there today—

Baroness Hollis of Heigham: Clause 42.

Lord Freud: We will get there soon.

Lord McKenzie of Luton: The noble Lord makes a fair point and we will be perfectly happy to pick up the discussion on these issues when we debate the clause. However, the noble Lord for his part might like to recognise a couple of suggestions that have come forward. He might like to add them to the list of things that will be included in the pilots. In the mean time, I beg leave to withdraw the amendment.

Amendment 51CEB withdrawn.

Clause 17 agreed.

Clause 18: Work availability requirement

Amendment 51CEC not moved.

Amendment 51CED

Moved by ***Baroness Hayter of Kentish Town***

51CED: Clause 18, page 9, line 3, at end insert—

"(e) the claimant having guaranteed and predictable access to high quality flexible and affordable childcare acceptable to the parents and children"

Baroness Hayter of Kentish Town: My Lords, again my education continues apace. I know that the Minister is a good man, that spring comes after winter and before summer, and now I know that he got on his bicycle.

In moving this amendment tabled in my name and that of my noble friend Lord McKenzie of Luton, I shall speak to the other amendments in the group. I welcome the comments made by the Minister in response to the first grouping that the reasonable position is the default, not full-time being the default position. Our amendments seek to protect those with substantial responsibilities for children from falling foul of the conditionality regime due to their caring responsibilities. In particular, we seek to maintain the protections put in place by the Labour Government for such people. Some noble Lords, although not me, will recall the substantial discussions that took place in the House at an earlier time.

Amendment 51CED would ensure that the limitations to the availability for work rules include in them reference to the availability of childcare which, as we have all accepted, is key to being able to work. Amendment 51FZZA similarly would write the existing safeguards into the relevant considerations when requirements are placed on a claimant. It is worth setting out the formal position, which was referred to by the Minister earlier. These established safeguards illustrate rather well the sort of issues that a lone parent or main carer faces when seeking to combine part-time paid work with caring for a child.

The first safeguard is that a lone parent of a child aged under 13 need look for work only during school hours, and the Minister has just confirmed that that will remain the position. Secondly, lone parents who can be treated as available for work under JSA during school holidays or when a child has been excluded from school and is not receiving education do not necessarily have to take up a job. Thirdly, lone parents may restrict their availability for work if they are the subject of a parenting order or have entered into a parenting contract. Fourthly, those with substantial caring responsibilities for a child aged under 16 have to be available to take up a job only at 28 days' notice rather than immediately if such responsibilities make immediate availability unreasonable.

6.15 pm

Lastly, when considering whether a claimant with a child under 16 has good cause either for refusing a jobseeker's direction or turning down a job, the decision-maker must take into account whether childcare was

reasonably available that is suitable for that child and parent. Those protections may not be perfect—although I have to say that everything that the previous Government did was perfect. One of their shortcomings is that for a claimant to put them to the test, they need to reach the stage of appealing against a sanction. That is a stage that many would be either reluctant to reach or unable to find the advice to go that far. That is why they are not perfect, but they are an important protection that we seek to continue.

They will obviously be even more important now that the Government expect people with children aged five and upwards to be subject to full work requirements and are extending full work requirements to couples with children. We therefore ask the Minister to confirm that all those existing protections will remain under universal credit and to outline how they will apply to a member of a couple with substantial caring responsibilities.

Along the lines that my noble friend Lady Hollis mentioned, ensuring that such protections are in place and effective will require advisers to be able to identify parents with relevant responsibilities, to know about suitable childcare locally and to be trained to recognise whether that is acceptable and appropriate for the child and parent.

As we have said several times, and I know that the Minister acknowledges, childcare is central to the purpose and, we hope, the success of the Bill. Although we undoubtedly welcome the extra £300 million that the Government have made available, that is only really for those additional people who will qualify for childcare and does not go to meet the needs of existing claimants or the loss that they have suffered by the reduction in the percentage that they can claim. Because of that, we still do not know whether work will pay for everyone—the impact assessment having not included childcare costs in assessing whether someone would be better off in work.

I have the same question for the Minister: if childcare costs mean that someone was not better off in work, would that count as a good reason—the new terminology for good cause—for a parent turning down a job? We know that the vast majority of parents with children want to combine work with bringing up a family. Gingerbread, which knows a thing or two about one-parent families states that single parents want to work:

"Increased income and financial independence are key motivators along with personal independence, the opportunity for social interaction with other adults, and to set a good example to their children".

Nearly half of single parents say that having almost any job is better than being unemployed and on benefits. However, despite all that the previous Government achieved, the continuing shortage of childcare means that finding a job that allows parents to care for children can be a struggle. That is particularly the case for the poorest. Parents in severe poverty who responded to a survey by the Save the Children Fund and the Daycare Trust said that a quarter of them had given up work; a third had turned down a job; and a quarter had not been able to take up education or training—all of them because of the difficulties of finding childcare.

The Prime Minister has expressed his desire, which we absolutely agree with, to make this the most family-friendly Government ever. It is an aim we applaud and we are here to help, so these amendments will help the Government to fulfil the Prime Minister's pledge. I beg to move.

Baroness Hollis of Heigham: I add a couple of lines to my noble friend's eloquent introduction to this issue. What we know from all our research about getting lone parents into work is that those lone parents stay in work if they have childcare they trust. Trust is key. As one lone parent told me when I visted, "I would never leave my child with strangers". Childcare they trust tends to be associated with schools and extended hours. That is highly trusted. If they live in an urban area, it may be the availability of a nursery which is acceptable to them and which is trusted because of scrutiny. They may have neighbours or friends, and so on, who are childminders.

The biggest resource in my experience has always been grandmothers, particularly the maternal grandmother. The reason the maternal grandmother could do the childcare and often would do so once or twice a week, particularly over holiday periods, allowing a lone parent to hold down a job, was because she was herself not caught by conditionality. Can the Minister assure us that he has taken into account that, as we see the retirement age rising to 66 from 60 and that she as well as he in the 60s bracket are expected themselves to be available for work if otherwise they would be claimants on UC, that that unpaid resource will be taken out of the caring economy which has made it possible for that grandmother to permit her daughter to work? In other words, there is interaction going on here with other fields of government policy.

I am sure that the Minister has taken this into account, but one thing that I was most pleased that the right honourable James Purnell was able to introduce was the substitution: where a lone mother did not need her HRP because she was in the labour market and getting her own NI, a grandparent did not lose her entitlement to a state pension by virtue of not being in the labour market for wages, but was in the unwaged labour market, allowing her daughter to remain in full-time paid work.

That resource will come out of the system, if I understand the double interaction, of the raising of the retirement state pension age for women and the conditionality that the Minister will expose her to while she waits in that twilight decade to draw her pension, while she is perhaps not an attractive option for many employers. Can he reassure us that this has been taken into account and that there is lateral thinking here because 40 per cent of lone parents have relied on grandparents to provide informal care? We have never recognised this, except in so far as we have been assured that she does not lose out in terms of a pension. Can the Minister advise us on how this will be handled in future?

The Earl of Listowel: My Lords, before I speak to my amendment in this group, Amendment 51FZA, I thank the Minister for asking his officials to provide

[The Earl of Listowel]

me with information in this area. I also apologise for being absent from the discussion of the first grouping today which was relevant to this debate now. I apologise if I repeat information raised then. I also remind your Lordships of Article 3 of the UN Convention on the Rights of the Child:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

I should be grateful if the Minister could make his best endeavours to demonstrate how the Bill is considering the best interests of the child in relation to this debate.

My Amendment 51CED states:

"It is not a failure sanctionable under this section if a claimant falling within section 22 does not have guaranteed and predictable access to high quality, flexible and affordable child care acceptable to the parent and child or children".

The lack of widely available, affordable and acceptable childcare has been referred to. The purpose of this amendment is to ensure that claimants with a dependent child will not face sanctions if they are unable to work or participate in work-related activity due to a lack of suitable high-quality, flexible and affordable childcare appropriate to the parents' and children's needs. As we have heard, most lone parents want to have the opportunity to combine paid work with the vital job of being a parent. However, so far the Bill seems to fail to recognise that the required childcare infrastructure is lacking in many parts of the UK, including Scotland. There also continues to be a serious lack of childcare settings that are properly equipped and which have staff who are properly trained to deal effectively and positively with children with disabilities, learning, communication or behavioural challenges or who have a wide range of additional support needs.

To make a slight aside, I know how important it is to the Minister and to all your Lordships that we encourage a culture of independence and attack a culture of dependency. The kinswoman of the noble Lord, Anna Freud, whom I believe was a child psychotherapist and an early-years teacher, established in her work dating from the 1940s the absolute importance of the relationship between the child and parent in making the move from infant dependency—absolute dependence—on the parent to adult independent emotional maturity. The danger is that if we do not do all we can in this Bill to strengthen the relationship between parents and children we might inadvertently build in the problem of dependency in the next generation. For adults to be independent they need to have had strong relationships in their early childhood. That is what gives them the strength to be independent in their adulthood. The nature of the relationship between parents and children also colours the relationships that those children will have as adults with other adults. Therefore, the strength of parental bonds between partners is coloured very much by their early experiences in childhood.

I wish to cite a couple of case histories of lone parents in Scotland. I should say that this amendment is supported by 20 charities working in Scotland and Northern Ireland. Judy says:

"All very well and good expecting lone parents to work once their children are in fulltime education, personally I don't have an issue with it. For me personally, voluntary work & eventually paid work turned my life around albeit not financially. However, where is the childcare to go along with this? Where is the flexible working? Where is the long term thinking? It's all very well providing 'some' funding for childcare, what use is it if there is none? We now face a new generation of children who are 'forced' by the Government to be latchkey kids … These same children are often (not always) the ones who require the most emotional support and stability, in particular during difficult times (separation/divorce) … who is going to be around to support them at the times where parents have to be working?".

I took part in the proceedings on the Childcare Act 2006. What was noteworthy about that was the recognition of how far behind our continental neighbours we were in developing an effective childcare strategy. We were 30 years behind Sweden in having our first childcare strategy. We start from a very low base in terms of thinking and providing for early-years and other childcare.

6.30 pm

We are also at a time of heavy cuts. They seem to be hitting, in particular, out-of-school childcare provision for children, including holiday provision. There is also concern about the quality of such provision. In the Childcare Act 2006, family information services were established throughout the country and local authorities to help parents find childcare. A recent survey by these family information services found that only 20 per cent of parents said that they could find appropriate holiday provision for their children. This was a decline on the one-third of parents who reported that in the previous year.

I will cite one more case: that of Hayley. She said:

"My mum works … An option which the lady at the job centre suggested was a holiday scheme club, you know the ones you see that are run by teenagers. Do I feel comfortable in the knowledge that they will look after my children—no I don't! If I was still with my husband I would still be a stay at home mum and no one would care, because I'm on my own and struggling to bring my kids up as best as I can they are saying it's wrong".

I used to work as a play scheme worker in my early 20s. On one occasion I had a day's induction, but I was unqualified to do this work. I particularly remember working with a group of 10 year-old boys. We had a lot of fun together. We went ice skating, dry ski slope skiing and swimming. It was tremendous, but I had no qualifications to do that work. The regret for me was although it was a great pleasure to teach boys to ice skate, it should have been their parents who were doing this. My father introduced me to swimming and to many other experiences. It should be parents who do this. Sometimes they will be unwilling to, but they should have time to have these important formative experiences with their children.

I had another placement about five years ago in a play scheme. Although the requirements for play scheme workers have improved, we still have a long way to go. The play scheme workers I worked with were young and pretty inexperienced. I understand this mother's concern at placing her child in these settings—if they are available.

Another issue is that for parents with children under five who are not caught by the Bill there is such a lack of availability of good-quality, affordable childcare

that while they may want to get into training and education so that they can get a better job, by the time their child is five and they are compelled to go to work, they can only do the most menial, low-paid work. Currently one hears from education colleges that their crèches are being cut back. This is such a counterproductive step. Parents who might learn to read and write and who might then be able to teach their children to read, write and do arithmetic are now unable to access that educational resource.

I cited research from the United States Manpower Demonstration Research Corporation in March 2001. It is a synthesis of how welfare and work policies affect children. Two studies found that work programmes in the United States decreased school achievement and increased behavioural problems in adolescents. It is quite a different experience, but it is concerning that it was found there. I hope that there will be some reassurance that there will be research into and monitoring of how encouraging more parents to go to work when their children are adolescent impacts on educational outcomes.

I have spoken for too long: I apologise. My final point is to reinforce Anna Freud's work on the developmental lines of childhood, from infantile dependence to adult emotional independence. It is very important that we ensure that we support the parent/child relationship as far as we can so that children grow up into independent adults who will go out, find work, make positive, strong relationships with their future partners and keep strong relationships with their own children as they grow up. I am not sure whether that is clear. I look forward to the Minister's response to these concerns.

Lord McAvoy: My Lords, I would like to speak in support of the noble Earl's amendment. There are cuts in the tax credit system, and I know from experience that many couples use that as part of their overall family income, to get high-class childcare. There are a whole stack of couples who are now in the process of cancelling that because they cannot afford to keep it going. There is going to be chaos in the childcare system because many parents, either single or together, will be in trouble, trying to get the same conditions that they have been used to in childcare over the past few years.

Unless parents are given that assurance that their children are going to high-class, quality childcare that they can trust—the noble Earl mentioned some circumstances in which parents do not trust childcare—the whole field of childcare and its provision is going to be a real headache for society. This amendment would be a safeguard to ensure that parents are satisfied.

Having had some experience of Ministers, I can almost hear the Minister's reply, along the lines of, "How can you guarantee the security of a system? People will fiddle, people will do all sorts of things, and we can't trust them". In some cases that is a reasonable judgment, but not in all cases, and certainly not in the majority of cases. People will feel that they have been done out of something here, and as usual it will be the women who give up the second job that assistance for childcare has helped them to go out and do.

I have spoken to scores of women in my former constituency for whom that support for childcare was absolutely essential. This amendment will go a long way towards making sure that parents are not subjected to failure if they do not receive the quality, flexible and affordable childcare that they have been used to up until now.

How would the Minister cater for those people who, with less money coming in, will perhaps have to downgrade their expectations if they want to continue with childcare, because they cannot afford as much? This has been a great liberation for parents, and it is something that the Government need to assure us of.

Lord Newton of Braintree: May I come in from my sedentary position? I ought to start by saying that, having been in another part of the United Kingdom for most of the day, I only strayed in here to demonstrate continuing interest and to check that the Minister was still being reasonable. I felt driven to contribute, as all too often both upstairs and downstairs, by the subject matter that was being discussed.

If I may say so, the noble Earl, Lord Listowel, need make no apology for the length of a speech from a noble Lord who has taken greater interest in these matters than almost anyone else in the House over all the time I have been here. His genuine knowledge and concern comes through, and we all benefit from it.

That said, I shall now incur the wrath of the noble Baroness, Lady Hayter, the noble Lord, Lord McKenzie, or both, or indeed of everyone. I had better admit immediately that if I were the Minister I would not touch this amendment, in its present terms, with a bargepole. It is all very well for noble Lords to talk about guarantees, but what does all that mean? Does it mean predictable? The number of hurdles here is unbelievable. The amendment speaks of "guaranteed", "predictable", "high quality", "flexible" and "affordable" childcare. Who will be the judge of all those? It also talks about the care being,

"acceptable to the parents and the children".

Frankly, that is not on, as a workable concept. I will just put that on the record in the interests of being helpful to the Minister.

Baroness Hollis of Heigham: Which one of those would the noble Lord suggest we junk?

Lord Newton of Braintree: There are too many hurdles in the amendment. In legal terms, although I am not a lawyer, it would be impossible to have guaranteed and predictable access to,

"high quality flexible and affordable childcare",

because the parents could say that it was not acceptable. Indeed, the child could say that it was not acceptable. It is not a sensible construct, as I am sure any legal mind would advise. The noble Baroness may not agree, but that is certainly the view I would take if I was advising the Minister.

However, coming back to the noble Earl, the childcare issue is an important one, as we have recognised throughout the proceedings on this Bill. It could be crucial to whether it is sensible or reasonable to expect

[Lord Newton of Braintree]
some people, be they single parents or others, to take up work. So we need a clear policy on this, even if in my view this amendment does not give it to us. I hope that the Minister will be able to give us some encouragement on that front.

Baroness Grey-Thompson: My Lords, I would like to speak up for working parents because I am a working mother, and as noble Lords may have noticed I have brought my daughter to work with me. The amendment goes some way towards addressing some of the challenges that working parents face. It is absolutely my choice that I work 300 miles away from where I live, and it is the choice that my family and I have made. But trying to find flexible, affordable and appropriate childcare is really difficult. I am not sure whether that makes me a good or a bad mother, but I think that bringing my daughter along to a Lords Grand Committee is better than leaving her in childcare for a week. However, for people in more challenging financial positions, it is a real challenge.

I agree that it is better if parents are working, and I think that I am a better mother because I work. I think also that my daughter would probably say that it is not acceptable to be dragged along to a sitting of this Grand Committee and that she might prefer to be somewhere else. The wording of the amendment might not be quite correct, but it is important that we get these exceptions right. It is bad enough that as a mother you feel guilty for everything that you do anyway. You are accused of abandoning your child, not being a good mother and all those other things, when you are trying to do a good job. So it is important to get this right so that children can benefit from it—then parents and the family will benefit from it as well.

Baroness Drake: I was not going to come in on this amendment, but I feel moved to do so—

Lord Newton of Braintree: Provoked by me, I should imagine.

Baroness Drake: Absolutely, I can use the word "provoked" freely because that is what has led me to rise to speak.

There is a danger that this will become an emotional debate because people feel passionately about their children. I had three children aged seven and under and I know exactly the tensions that have been described. But this comes out of the construct of the application of in-work conditionality. The universal credit system imports a novel and extensive level of government discretion. What people are struggling with, because the Government cannot answer it, is how that discretion will be applied in real-life circumstances that they can empathise with. This instance arises against the background that most people who work part time are women, so they will be most subjected to the in-work conditionality on extending their hours. However, the childcare system in this country is inefficient, so there are those two background factors. Taken together with the discretionary system, which on the Minister's own admission has a long way to go before it is fully defined and fit for purpose, three fundamental issues arise that people are struggling to get answers on. They do not think the answers lie in guidance, they want some security on the face of the Bill that constrains the exercise of the Government's discretion.

Those three issues are: trust, care of the child and the compatibility of conditionality with the reality of the childcare system. I think back to when my children were younger. Anyone who has been a parent will agree that the thought that any bureaucrat in a complex system could have imposed a sanction on me unless I agreed to put my children into a care arrangement in which I did not have confidence is inconceivable. I could deal with that, because I had a job that gave me enough income. I had enough self-confidence; I had articulacy; I had education; I could cope with that challenge. What if I had been a low paid mum, with more limited educational skills? Could I have articulated or defended my fears about being asked to put my child into a provision that I did not trust? That is fundamental. As has rightly been said, that involves the care of the child. One cannot just say, "We think that parents are better and that attitudes to benefit or bearing responsibility are better if people work". That has to be set against what is a fair system for the care of the child. We do not want lots of examples of people conceding under the pressure of conditionality to unsuitable care arrangements and horror stories resulting.

6.45 pm

The third point, which my noble friend Lady Hollis articulates well, is that we must make conditionality compatible with the reality of the childcare system in this country. A great deal of childcare is done by families. We have just seen the Government—well done—give grandparent credits under the national insurance system to accrue on state benefits as a recognition of the importance of that care system to the child. It is recognised as having economic and social value, so you can now accrue state pension benefits.

Equally, we must recognise that here. We cannot say on one level that we recognise the importance of grandparents but that when they are addressed under the benefits system, we will subject them to one level of conditionality of the carer here; while their daughters or sons, who are using their parents for childcare, may have another adviser subjecting them to another set of conditionality discretions over there.

Those are the fundamental issues. Saying that that will be covered in guidance is insufficient. I am sure that my noble friend Lady Hayter will not mind me saying that the drafting of the amendment may not be perfect, but we are in Committee. We can concentrate on the perfect drafting of the perfect amendment later. The amendment says to the Government: "If you want to take a powerful range of discretions to apply an in-work conditionality system that on your own admission is not yet defined and refined, in the interface between conditionality being imposed on carers—particularly women—you must take into account the issue of the relationship of trust of the parent leaving the child; how you protect the care of the child against some inefficient application of discretion, because that will occur; and the compatibility of the conditionality

guidance with the reality of the childcare system. That is the fundamental issue that needs to be addressed in the Bill.

Baroness Sherlock: I rise hesitantly, as the Minister got rather cross last time I got up, but I am brave. I was taking advice from more experienced colleagues to find out whether it was in order for me to speak to an amendment whose mover had not moved it. I hope that it is. I refer to Amendment 51F, which would require of the Secretary of State, in making decisions about prescribing certain actions, that:

"The matters prescribed under subsection (2) shall include the well-being of any child whose life or care may be affected by the requirements of this section".

I wanted to address that and to pick up some of the comments made by the noble Earl, Lord Listowel. One thing that has always worried me on policy dealing with families and children is how difficult it is in government, when different departments have responsibility for different set of policies, to ensure that they take account of each other's policy objectives. There has always been a danger—I understand it completely—that when one is considering childcare primarily from the point of view of how one enables parents to work, one misses some of the unintended consequences of that policy on, for example, the well-being of children, their development and the next generation.

If the Minister does not like how any of the amendments are worded, he can advise me. He is far more experienced and knows a great deal more about how the DWP operates than I will ever know. Could he advise the Committee on how we might be reassured about a decision that will be taken perhaps by a young adviser or Jobcentre Plus employee who will rightly focus on how to get a person into work? How could that person be required to take account of the impact on the child?

My final point is that ultimately this will play to the Minister's benefit. Some years ago I visited the United States to look at welfare to work programmes there. As the Minister will know, the regime there is somewhat harsher even than the regime envisaged by him. It was interesting to meet the people organising the programmes. The single biggest barrier to getting people into those programmes was the lack of confidence of parents in the quality of substitute care. There is a huge amount of research into the effect of that on children. Will the Minister consider that reassuring parents on this might be in his interests, as well as to the advantage of the children?

Lord Newton of Braintree: My Lords, I will say a brief word to defend myself against this onslaught. I do not think that there is a lot between us. I do not disagree with a word spoken by either of the two noble Baronesses about what our objectives should be. I hope that I indicated that. I simply do not think—this is my attempt to curry favour with the Minister—that the amendment achieves the objective in a satisfactory way. Can we be friends again?

Lord Freud: On that note, I shall take this opportunity to respond. My first point is that we are all in general agreement that it is vital to balance the requirements placed on claimants with any childcare responsibilities they may have. The amendments raise the concern that we will not take these responsibilities into account. I hope that I will be able to reassure noble Lords that this is not the case.

As is the case now, legislation will provide clear safeguards. We are committed in particular to ensuring that the same safeguards exist for lone parents as are currently in place. Our legislation will ensure that no claimant who is responsible for a child under five can be made to look for or take a job. These claimants will be required only to attend work-focused interviews. If they fail to meet this basic requirement for no good reason, they will be subject to the lowest level of open-ended sanction. The sanctionable amount for this group will be capped at 40 per cent of the sanctionable amount for other claimants.

No claimant with a child under 13 will be required to look for a job that does not fit in with their child's school's hours, including a reasonable allowance for travel time. Such restrictions will mean that a claimant will not be required to apply for or accept a job that would mean that they could not care for their child outside school hours. Advisers will take into account the care needs of older children so that work search requirements can continue to be restricted where this is appropriate.

Lord McAvoy: How will those applications be checked? Will there be a system to verify that what the claimant says is accurate?

Lord Freud: I take it that the noble Lord, Lord McAvoy, means checking that the claimant is working and using childcare.

Lord McAvoy: And the arrangements for going to school, with all the timings involved as well.

Lord Freud: That would be done through a conversation between the claimant and the adviser. Clearly, what is a reasonable amount of time is not that complicated an issue when you know where someone works and what their route should be. I am sure that they will be able to reach a reasonable agreement on that.

To the extent that childcare may be needed to help claimants meet work availability requirements, for example in school holidays, advisers will work with parents to help them identify childcare options. Currently, this would include referring claimants to the local family information service.

I take the important point raised by the noble Baroness, Lady Hollis, on the role of relatives in caring for children. Clearly their role is important as it allows parents to work and supports them. My best response is that we will keep it very much in mind as we develop our thinking and put the system into a state of implementation. We agree with the principle that childcare must be acceptable to the parent and even the child, despite what my noble friend Lord Newton said.

Lord Newton of Braintree: What if they disagree?

Baroness Hollis of Heigham: If they have good reason, we should listen to them.

Lord Freud: I am laughing at the memory of my own children's disapproval of their minders. Jobcentre Plus does not dictate to parents the type of childcare

[LORD FREUD]
or which provider they should use, or make any presumption that a childcare provider is suitable for the parent and child in question. The noble Baroness, Lady Hayter, asked whether childcare costs would be taken as good reason. This goes back to my previous response: there is no blanket rule. We will consider each case and look at all the benefits of work. Clearly, we will elaborate the detail on that in due course.

Advisers will continue to have an important role in both challenging and supporting parents who may have preconceived ideas about childcare, who may have had previous experiences or who have not used the services before. The circumstances of all parents and the needs of their children vary, and advisers will continue to take this into account.

Several noble Lords raised the question of the availability of childcare. We should bear in mind that local authorities have a duty under the Childcare Act 2006 to secure, as far as is reasonably practicable, sufficient childcare for working parents of children aged from birth to 14, and from birth to 18 in the case of disabled children. They must formally assess sufficiency in their area every three years. Local authority decisions on what they regard as "reasonably practicable" should be documented and published to allow scrutiny and challenge. Parents who feel that their needs have not been met can complain to the local authority. In the event that they are not satisfied with the way that their complaint has been dealt with, they may make a complaint to the Local Government Ombudsman. I will borrow the claim of the noble Baroness, Lady Hayter, about the perfection of all things under the previous Government. This is after all the system that they put in place, so I am sure that she is absolutely satisfied with the arrangements.

A parent who considers that childcare is not available will need to demonstrate to the adviser that they have taken reasonable steps to secure such care. If childcare is available but the parent considers that it is not appropriate, he or she will need to provide information indicating that they have discussed their concerns with the service provider and give reasons why they do not consider the provision to be appropriate. Parents will need to demonstrate that there are no alternative arrangements that it would be reasonable for them to make. Where the adviser considers that the parent has not taken reasonable steps to identify or access appropriate childcare they will refer the question to a decision-maker. The sanction will only be imposed if the claimant does not have a good reason. In considering whether there is good reason, we will consider all relevant matters raised by the claimant, which would include the individual circumstances of the parent and children, and the availability of suitable childcare. Of course, any sanction decision can be appealed to an independent appeals tribunal for review.

Ultimately, we believe that in the vast majority of cases it is best for children if their parents are in work. Research into child poverty and workless households highlighted that:

"Parental employment is the key route out of poverty and disadvantage. Growing up in a workless household and/or in poverty can have a significant negative effect on a child's development."

That is from the 2004 Treasury document, *Choice for Parents, The Best Start for Children*.

7 pm

A recent evaluation of lone parents' experiences of moving into work also found that working had a direct positive effect on their children, with both direct and indirect benefits. That research was based over here and did not incorporate some of the findings that have been quoted about US research with its differentiation between younger and older children. I am not sure that we have that evidence locally. However, other research studies have shown that work seemed to have a positive effect on parental relationships with their children. This was because time spent together was more appreciated and valued by both the parent and the child even though the amount of time had generally reduced as a result of the mother being in work. That finding is actually supportive of the pioneering work of my great aunt, Anna Freud. She would be relieved to see that I am not trashing her concepts.

We believe that these provisions strike a fair balance. They allow parents to find the childcare that is right for them and to meet their work-related requirements. I also add my thanks to the noble Earl, Lord Listowel, for raising this important issue. He made a powerful speech which reminded us of the importance of this area. I hope that I have reassured him that the position is actually improving and that we have the protections in place. On that basis, I urge him and other noble Lords to withdraw their amendments.

Baroness Hollis of Heigham: My Lords, can the Minister give us an assurance that one possibility he could explore again is that great source of unpaid childcare: grandparents. I tried to get payment, but the deadweight costs would have been too huge. I hope that he will take the issue of her—and it is usually a her—responsibility into account in assessing her conditionality. We have already moved down this path, as my noble friend mentioned, in terms of credits for her pension and so on. It would not be difficult to do and it would ease the pressure on two or even three generations if her contribution to childcare was set against the conditionality on her in her late 50s—certainly in her 60s—and thus make it possible to keep all three generations afloat.

The Earl of Listowel: My Lords, sorry—

Lord Freud: No, let us take them all—

The Earl of Listowel: Before the noble Baroness withdraws the amendment, I want to take this opportunity to thank the noble Lord, Lord Newton of Braintree, and the Minister for their very kind words. If praises are our wages in this House, I feel well paid today—I wish I were more worthy of what has been said. I am grateful to the Minister for his careful response. It is reassuring to be reminded how important it is to children and their success that their parents are in work. Shall I wind up?

The Deputy Chairman of Committees (Lord Haskel): Is the noble Earl going to be very long?

The Earl of Listowel: Anna Freud demonstrated in her life's work how complex child development is and how professionals working with children had to recognise that complexity. I am to some degree reassured by what the Minister has said, but there is great complexity here. Particularly in childcare, we have a very mixed provision and shortages in many areas. There may be things that we can think about before the Report stage that would be helpful in terms of future thinking—for instance, the work of the family information services might complement the work of Jobcentre Plus advisers, helping them to understand what is available in their local area.

7.05 pm

Sitting suspended for a Division in the House.

7.17 pm

Lord Freud: My Lords, there are two questions here. The noble Earl, Lord Listowel, asked whether our provision could be improved and integrated more closely. Clearly we do have links with the family service that I was describing. What we are doing in Jobcentre Plus is trying to co-locate services, so there may be something there to look at very closely.

The noble Baroness, Lady Hollis, made a point about unpaid childcare by grandparents and others, which I was able to think about in the break. It is deceptively easy to say, "Oh, yes", but actually it is very complicated. There is a whole load of things happening: increasing longevity; much later childbirth; and in some cases much earlier childbirth, especially in some of the groups we are discussing here. There is a lot of social change going on, including the pension provision, so this is pretty difficult to do much about. I could say consolingly that we will look at it—and I will look at it, I am quite interested in this area—but solutions here are very difficult and would be hard to find. I will look at it but I am not expecting huge things to come out of that look.

Baroness Hollis of Heigham: It is very interesting that the noble Lord should say that, because it was exactly the advice I had from civil servants at the time. None the less, it did not stop us introducing NI credits for grandparents who did more than 20 hours' care a week for their daughter, releasing her to work. If you can do it for national insurance and pensions, you can certainly do it for childcare, and it would be much easier to do it with conditionality.

Baroness Sherlock: My Lords, perhaps I could suggest to the Minister that Jobcentre Plus could encourage the grandparent to train as a childminder. The daughter could then claim help through universal credit to pay the grandparent for childcare. You could simply cycle the money round that way—it might be a better way to do it.

Lord Freud: My Lords, I am really grateful to the noble Baroness, Lady Sherlock, for her imaginative way of manipulating the system. I am sure that it is something we should look at very closely. No, come on; I will look at this. This is very difficult so I am not promising anything, but I will look at it.

Baroness Hollis of Heigham: It is already the case that grandparents can mind a grandchild if they are a registered childminder, with the childcare taking place in their own home, and look after at least one other child. That is already done.

Baroness Sherlock: My Lords, I am aware that irony plays rather poorly in *Hansard*. Just to clarify for the record, I am not actually recommending this scheme to the Government. I simply want to raise the fact that one has to be careful not to build perverse incentives into the system and over-formalise relationships that might otherwise find a way of working out on their own.

Baroness Hayter of Kentish Town: My Lords, I thank the Minister for his response, and the speakers who contributed to the debate. I especially thank the noble Lord, Lord Newton of Braintree, who is not in his place at the moment. Perhaps other noble Lords could pass on to him that he would never incur my wrath—the Minister's, yes, but never mine.

The one thing that we have to take account of when we use words like "trust" and "availability" is that the debate is taking place within a much broader overall government policy. We have already mentioned in Committee that unemployment is at a 17-year high. There are already cuts to childcare. It is estimated that 32,000 people have already given up work because of the reduction in childcare allowance—at a cost of £50 million to the Exchequer, I gather, so the Treasury will not be very happy about that. Of course, it demonstrates yet again that if affordable childcare is not available, people do not go to work—fairly obvious, but there you are.

Unfortunately the noble Baroness, Lady Grey-Thompson, is not in her place. I was a little worried after what the noble Earl said about being an untrained play scheme worker that maybe we were all untrained carers today for her daughter. At least with her mother here, I assume the child was in safe hands. As a grandparent, I very much appreciate the comments made about the contribution of grandparents. I am in the other position: with very new grandchildren, all the grandparents line up and vie to look after them. I am assured that this soon gets a bit too much and problems set in. Short-term care is much more easily set up than long-term grandparenting, unless the sort of help that my noble friend Lady Hollis mentioned is available.

I will make a couple of comments. First, I thank the Minister very much not only for saying that he will look very carefully at the suggestions made by my noble friend Lady Hollis but for the commitments he gave about including current protections. However, he did not answer one of my comments about whether they will apply to couples. He mentioned lone parents but not couples.

Lord Freud: Let me clarify that for the record. The protection includes couples as well.

Baroness Hayter of Kentish Town: This is getting better. I have one more question and I wonder if I can risk it. The Minister was also helpful on the question of school hours. He did not mention the point about being available for work during school holidays and whether those protections will remain. But given that he is in such a generous mood, my estimation is that he will reassure me on this.

Lord Freud: It is my delight to be able to reassure the noble Baroness that those protections will remain.

Baroness Hayter of Kentish Town: I am twitchy about one more thing, because I know that the Minister will say no. Although we are happy about the responsibility being put on local authorities with regard to childcare, I cannot let the moment go without saying that their funding has been cut. I know that that is not within his department, but some of these things cost money.

The Earl of Listowel: Before the noble Baroness withdraws the amendment, I should have reminded your Lordships that the Childcare Act 2006 applies only to England and Wales, so local authorities in Scotland and Northern Ireland are not under these obligations. I hope that that is helpful to the Committee.

Baroness Hayter of Kentish Town: I should have known that, but I did not, so I thank the noble Earl. Nevertheless, we have had some helpful reassurances in the Minister's response to the debate and I beg leave to withdraw the amendment.

Amendment 51CED withdrawn.

Amendment 51CEE not moved.

Clause 18 agreed.

Clause 19 : Claimants subject to no work-related requirements

Amendment 51CEF

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

51CEF: Clause 19, page 9, line 16, leave out paragraph (d)

Lord McKenzie of Luton: My Lords, I shall speak also to the other two amendments in this group. They are straightforward probing amendments that refer to Clause 19, which is entitled:

"Claimants subject to no work-related requirements".

We discussed previously that claimants would fall primarily in that section if they have limited capability for work or for work-related activity; if they have regular and substantial care responsibilities for a severely disabled person; or if they are responsible carers for children under the age of one. However, subsection (2)(d) provides for a situation where,

"the claimant is of a prescribed description".

Subsection (3) goes on to say that:

"Regulations under subsection (2)(d) may in particular make provision",

in respect of "hours worked", "earnings or income", and,

"the amount of universal credit payable".

Subsection (4) states that regulations made under subsection (3) may,

"in the case of a claimant who is a member of the couple, make provision by reference to the claimant alone or by reference to the members of the couple together … make provision for estimating or calculating any matter for the purpose of the regulations".

We have moved this amendment in light of the report of the Delegated Powers and Regulatory Reform Committee which said in respect of those powers:

"We do not regard the first time affirmative procedure as necessarily inappropriate but the House may wish to be satisfied by the Minister that the exercise of this power on the first occasion will sufficiently define the Government's approach, and that subsequent uses of the power will make only minor adjustments".

I shall focus particularly on the latter part of that statement. The Government's response states that it is the intention of the Minister,

"that the key principles will be established on first use. In respect of 19(2)(d) we are providing draft regulations"—

I think we now have those—

"setting out the circumstances which would lead to a claimant being in the no-work related requirements group. In respect of 19(3) and (4), when the regulations are debated, we will be able to set out how the work-related threshold will be set".

Therefore, we need to wait for that, although we touched on some of the issues earlier. Will the Minister take this opportunity to deal more fully with the request of the Delegated Powers and Regulatory Reform Committee, in particular the issue relating to subsequent uses of the power being focused only on minor adjustments? I beg to move.

7.30 pm

Lord Skelmersdale: My Lords, having been wonderfully rude about the first probing amendment of the noble Lord, Lord McKenzie, I am going to do exactly the opposite now because I regret that he announced that this was a probing amendment. This is the widest power that I have seen for many years in any potential Act of Parliament. Paragraph (d) of Clause 19(2) states that,

"the claimant is of a prescribed description".

Subsections (3) and (4), which relate to the subsequent amendments as the noble Lord has explained, include the word "may". However, if "may" is included, "may not" would also be included. The phrase that sprang to mind was, "How wide is the ocean; how deep is the sea?". I actually think that for once the Merits Committee has not gone far enough; nor, as I said, has the noble Lord.

Baroness Thomas of Winchester: My Lords, just to correct my noble friend Lord Skelmersdale, it was the Delegated Powers and Regulatory Reform Committee, not the Merits Committee.

Lord Skelmersdale: Yes, my Lords, I am sure it was.

Lord Freud: My Lords, noble Lords will be aware that we intend to use the power in subsection (2)(d) to establish the conditionality threshold. In summary, the threshold will be defined by establishing the hours we expect each individual in a benefit unit to work, taking account of their particular capability

and circumstances, and multiplying this by the relevant national minimum wage. We believe that setting their threshold in this way is the right thing to do. It will mean that we can impose work-related requirements only on those claimants working less than we could reasonably expect in benefit units falling under the threshold and it ensures that we take full account of a claimant's circumstances and capability. As we have discussed, we believe that we must have the power to encourage and support such claimants to do more to support themselves. Without a threshold many more working claimants would fall into the all work-related requirements group. We do not want to bring into conditionality those claimants who are working as much as we can reasonably expect. Having a threshold is essential for this.

Finally, we intend to use this power to do more than set the conditionality threshold. We will also use this to add other categories of claimant to the no work-related requirements group, ensuring that particular groups of claimant are treated appropriately. This includes working claimants on jury service, claimants on adoption leave and claimants who are over state pension age. It is clearly important that such claimants remain out of conditionality. I should make clear to my noble friend Lord Skelmersdale that paragraph (d) is a protective measure. If we did not have it, we would not be able to protect those people from conditionality.

Lord Skelmersdale: My Lords, may I come back to my noble friend the Minister? I totally—surprise, surprise—trust this Government but one day there will be another Government, perhaps not even comprised of the party of the noble Lord, Lord McKenzie. That Government may use this power in ways that we cannot now foresee, which is why I do not like it.

Lord Freud: I thank my noble friend for that, although I think in practice paragraph (d) allows a Government not to impose conditionality. This measure protects the individual. Of course, I absolutely understand my noble friend's suspicion that the measure might overrestrict what another Government might do, which would not favour getting people into work. I am sorry; that was meant to be a joke.

Let me come back to the matter in hand. Given that we expect the first use to set the principles and to remain broadly unchanged, I hope I can assure noble Lords that affirmative for the first use is appropriate. We have set out how we intend to use this power. We define a threshold, as we have set out in our note, and add in the additional groups, as in the draft regulations. I can assure the noble Lord, Lord McKenzie, that we do not expect significant changes to this. For this reason, I ask him to withdraw this particular amendment.

Lord McKenzie of Luton: I thank the Minister for that reply. As we discussed earlier, we understand the need for the sort of thresholds that are envisaged here, and why they are there. We also understand the need for scope for a further category of claimants who will be subject to no work-related requirements at all.

The noble Lord, Lord Skelmersdale, is right that this is a fairly broad power. I would not put it in quite the terms that the noble Lord does, and I am not sure why, if he envisages that there may be a different Government in the future, it might not be made up of people on this side of the Chamber, although perhaps that is a debate for another day.

This was raised because we wanted to focus on the issue that subsequent uses of the power will only make minor adjustments—since that was what the Delegated Powers and Regulatory Reform Committee were seeking in the noble Lord's answer—particularly in relation to thresholds of hours-worked earnings, and the amount of universal credit payable. If the assurance is that it will only move in a minor way from the starting position, then it addresses precisely the issue that we were probing. On that basis, I beg leave to withdraw the amendment.

Amendment 51CEF withdrawn.

Amendment 51D

Moved by ***Baroness Drake***

51D: Clause 19, page 9, line 16, at end insert—

"(e) the claimant is a family and friends carer who takes on the care of a child—

(i) where the child comes to live with the carer as a result of—

(a) plans made under a child protection inquiry in accordance with section 47 of the Children Act 1989;

(b) inquiries in accordance with section 53 of the Children (Scotland) Act 1995; or

(c) an investigation in accordance with section 37 of the Children Act 1989;

and the local authority states that the child cannot remain with the parents in the current circumstances;

(ii) where the carer has secured a residence order, including a residence order under section 11 of the Children (Scotland) Act 1995, or special guardianship order—

(a) to avoid a child being looked after where there is professional evidence of the impairment of the parents' ability to care for the child;

(b) arising out of care proceedings;

(c) following the accommodation of a child; or

(d) following the death or serious illness of a parent;

(iii) where the carer is an approved kinship carer in accordance with Part V of the Looked After Children (Scotland) Regulations 2009; or

(iv) where the child would suffer undue hardship if the exemption did not apply.

(2A) Subsection (2)(e) applies for the first year of the claimant being the child's carer."

Baroness Drake: My Lords, the purpose of this amendment is to exempt family-and-friend carers, who are raising a child or children, from the conditionality requirement to seek work under universal credit for a period of one year.

I know that many noble Lords have expressed sympathy with the problems faced by family-and-friend carers, but were concerned to define the population that would be embraced by any amendment. The amendment does that. These are children who cannot live with their parents and would otherwise be likely to be in the

[Baroness Drake]
care system, at significant cost to the state, and against their better, or best, interest.

These children include those who, for example, have to live with a carer as a result of a plan following a Children Act 1989 child protection inquiry, or because the carer has a residence order or a special guardianship order arising out of care proceedings, or following the death or serious illness of a parent. The list of legal circumstances is clearly set out in the amendment, and covers the relevant legal references for Scotland as well.

The amendment specifically lists situations so that it is clear which family-and-friend carers would be exempt from having to look for work for twelve months from the receipt of the child for whom they are assuming care. The amendment is designed to recognise that the circumstances of family-and-friend carers vary enormously. It seeks to offer protection from conditionality for one year to those in the most challenging circumstances. Carers are not covered by this amendment if they do not have a legal order.

There are compelling economic and social reasons for this amendment. First, there are an estimated 200,000 children in the UK who are being raised by grandparents, elder siblings, or other family members and friends. To refer to a previous comment from the Minister, this does not fall into a "little change" area; this is a matter of some scale. If just 5 per cent of children in such care were to enter the care system, it would cost the taxpayer £500 million each year. It costs £40,000 a year for a child to be placed in independent foster care.

In the second instance, undermining such carers will impact the child. The children in such care may have suffered abuse and neglect. They are often exceptionally vulnerable. In about half of all cases their parents are misusing drugs or alcohol. Kinship carers often need to devote a lot of attention to such children, especially when they first move in. The carers themselves often feel stressed and isolated. Forty-six per cent of family-and-friend carers are raising at least one child with a disability or special needs.

Research from Grandparents Plus highlights the fact that three in 10 kinship carers give up work, sometimes at the direction of social services, and often because it is the only way to meet the child's challenging needs. A further three in 10 reduce their working hours, and their role is akin to that of a foster carer. Many children they look after would otherwise be in local authority care. The children may move into a family or friend's care at any age, not just when they are under five or seven but often when they are young teenagers with difficult problems. For some carers, a year's exemption from being available for work or additional work would give them enough time to manage the upheaval in their lives and support the child before having to juggle work and care under any conditionality requirements.

Reinforcing the similar findings of a survey carried out by the Family Rights Group, a survey of grandparents and other family-and-friend carers conducted by Grandparents Plus found that 28 per cent of carers gave up work when they took on the care of the child and a further 29 per cent reduced their hours. The same survey found that eight out of 10 were under 65 and four out of 10 were under 55. Clearly, they will fall in significant numbers within the conditionality framework. Family-and-friend carers often report that social workers insist that they give up work in order to prevent the child being taken into care. However, only a minority—around one-third—receive an allowance from the local authority.

One consequence of the Bill and of other policy changes being introduced is that in future many more family-and-friend carers will be affected by conditionality requirements. At the moment, single family-and-friend carers, such as single parents, do not have to be available for work until the youngest child is seven. However, Clause 57 reduces this age to five. Furthermore—this comes back to our debate on the last but one amendment—the increase in the state retirement age will mean that increasing numbers of older grandparent carers will be affected by conditionality. As that age goes up, by definition more of them will come into the conditionality framework. Therefore, an unintended consequence of the changes may be that fewer family-and-friend carers will step into difficult family circumstances. The result will be an increase in the number of children in care. Clearly this would not be in the child's best interests, and would certainly translate into an increased cost to the state.

A lot of case studies have been sent to me by organisations that care about this community. I have tried to condense one powerful case study. It is a good one because it challenges the stereotype of young people. Paul is a 24 year-old man. He is the sibling carer of his six younger brothers and sisters. They were taken into care when his mother disappeared. Paul successfully secured a special guardianship order for all six children to live with him. Social workers have stated that he cannot go back to work until the youngest, now seven, is at secondary school because of what the children had been through.

7.45 pm

The problems that this community of kinship carers face do not only lie within the requirements of the welfare system; they also suffer a lack of protection in employment law. Maternity leave and adoption leave recognise an adjustment period for parents but there is no such adjustment period in employment law for family-and-friend carers, despite the fact that these children often have considerable needs and have suffered the same adversities as those who enter the care system.

We have a situation where many of these carers face a potential scenario whereby, first, the local authority requires them to take time off work to care for the child; secondly, as employees they have no legal rights to such leave so they have to give up their jobs; and, thirdly, they could well face the conditionality requirements under the rules of universal credit to seek work. This is a tough Catch-22 call for many taking on the care of children in very difficult circumstances.

I accept that in some circumstances it would be desirable if family-and-friend carers did not have to fall out of the labour market in the first place because this is rarely in their best interest or in the children's

long-term interests. However, they often need to take a break and that can also be a requirement of the legal order or the social services. Will the Minister agree to speak to his colleagues in BIS to urge them to look at this community I have identified, which is covered by legal order? It would be easier for family-and-friend carers to take career breaks when the child first moves in, in much the same way that adoptive parents can take adoption leave. The forthcoming employment Bill offers an ideal opportunity to provide greater recognition and support for family-and-friend carers who are working.

I appreciate that we cannot address employment legislation in this Bill but I did not want the opportunity to pass to ask the question of the Minister. We can, however, address the rules of universal credit and ensure that those family-and-friend carers looking after children consequent to a legal order should be exempt from the work conditionality requirements for a period of 12 months when they take care of the child. We need to remind ourselves, because there is a philosophical dimension to the changes to the welfare system, that these carers are not avoiding responsibility. These carers are voluntarily embracing the responsibility of being the carer in the interests of the child and often in the most challenging of circumstances.

As I have said, this amendment defines the population that I am asking should be exempt from the 12-month conditionality requirements. Refining this amendment to address those family-and-friend carers where they take the children into their care as a consequence of a legal order will mean that there are still a lot of carers who are not covered by such orders. I recognise that the interests of the child are paramount and we know that in some instances informal carers do not properly look after the interests of the child. I am not going to walk on to territory on which I am not an authority. With any group of people, however, it is never black and white, it is always grey.

Research by Grandparents Plus shows that some carers look after a child for many years because of extremely difficult family circumstances but have no legal order. They do not apply for the legal order often because they fear that the child will be taken away from them, or they do not have the capacity or the confidence to deal with the complexity of applying for legal orders. Notwithstanding that the interests of the child are paramount and that this is not my area of specialty, it is equally important that in any guidance to Jobcentre Plus staff, or any staff in the outsource provider, there is guidance that is sympathetic to families, even if they have no legal order, who are none the less making a significant contribution to caring for children.

Lord Freud: My Lords, without wishing to go against normal procedure, it might be valuable if I came in straightaway to say where I stand on this, because it might enable us to move the debate to move on if noble Lords know what I am saying before rather than afterwards.

I recognise the valuable job that families and friends, kinship carers, do and I recognise the difficult circumstances that they face. I had a recent meeting with kinship care organisations to understand their priorities. I am absolutely convinced that this is a key area and am currently looking closely at ensuring that this group is treated appropriately under the universal credit. There is ongoing work, in which I am deeply involved, on how they should be treated for conditionality purposes; and, indeed, are other areas where we can talk to other departments. What the noble Baroness, Lady Drake, said resonates with me.

Formally, there are safeguards and flexibilities for this group, and, as a minimum, family and friends carers are covered by the same safeguards as any other parent under universal credit; with the normal limitations against imposing full-time search and availability requirements on the carers of younger children and so on. Where the work-related requirements apply, the work-related advisers have broad discretion. However, there are circumstances where it is not reasonable to expect a person to meet even a limited work search or availability requirements. Among other things, advisers will have the scope to temporarily lift the requirements for any period when a child's needs are such that the claimant must be able to provide full-time care. The point where the older child first moves into a household can often be a very difficult period of adjustment. There is a problem, which is not directly in the hands of DWP, with holding on to a job. That is a matter of concern, especially where you have advice, often from social workers, that the job must go. The noble Baroness, Lady Drake, gave one such example. The least that will happen is that we will look at easements on a case-by-case basis, given the difficulty of having blanket rules. However, we recognise that clarity of treatment and a clear legislative exemption could be of value. As I said, I am actively considering this area, and if further legislation is required, we already have scope to make regulations, as necessary.

Given the ongoing thought that we are giving to this area, I will ask the noble Baroness to withdraw her amendment. I have jumped in early so that any other noble Lords who want to discuss this area know where I am coming from, rather than trying to convince me where I should be coming from. I suspect that I will just say, "Yes, yes, yes", to a lot of what people are going to say, so other things would be useful.

Baroness Lister of Burtersett: I very much welcome the positive response of the Minister and the fact that he has clearly been talking with kinship carers and thinking about how to address the issues raised by the amendment tabled by my noble friend Lady Drake.

I just press him on his final point about doing this on a case-by-case basis. One of the recurrent themes of our discussions is the extension of discretion. I understand the value of discretion, but as the noble Lord himself has acknowledged, it does not provide the clarity of treatment that something in legislation would do. I get the sense that there may be something in future in regulations. I cannot speak on behalf of my noble friend but it would be valuable if there could be a firm commitment before the Bill leaves this House, even if it is not in the Bill, that it will be in regulation. I will not say all that I was going to say because the noble Lord clearly does not need convincing of the importance of this issue. It is one that I have become

[Baroness Lister of Burtersett]
aware of only fairly recently, partly at the all-Peers meeting where a member of a kinship carers' association spoke to us. I was very struck by their case in the way that the Minister has clearly been.

I also want to mention, if only to get it on the record, that I was at a conference at the Law Society at the weekend on economic and social human rights. A presentation was made there by the Poverty Truth Commission from Scotland. Some of its members are people with experience of poverty, some of whom are kinship carers. I was struck that it said one of the key issues was kinship care. I will not quote as much as I was going to, but the commission states:

"Kinship carers have been supporting each other and struggling for recognition and justice for many years".

Recognition is very important for people living in poverty. This is something I have become aware of through my work on the Commission on Poverty, Participation and Power, which also involved people with experience of poverty. The kind of amendment that my noble friend proposes would have both symbolic and practical significance. It would provide that recognition that simply saying, "We will look at it on a case-by-case basis", would not do. Having said that, for once I can hear the ministerial nuances and I know when to say thank you very much.

Baroness Sherlock: My Lords, I have two brief points to make. I was delighted to hear the warmth of the Minister's response. If he is thinking about this area, perhaps I could punt two thoughts at him. First, I can see that he will be concerned that there may be a range of other circumstances that may appear similar on the face of it, where there is a disruption to the circumstance of an older child, perhaps moving house, and therefore there might be some wish to have that taken into account; for example, a family break-up where the children are suddenly moving to a different house and although the children are of school age, the disruption to the household might make the parent feel that they should stay at home; or the formation of a step-family where there is some significant upheaval in the household which might put a parent who might normally want to go out to work in that situation. If the Minister is thinking, perhaps he can think about those issues as well.

The reason he might want think that this is a different case is that the grandparents or the other kinship carers have a choice: they do not have to take these children on.

The danger must be that they have to do so unless they have absolute assurances. That is the distinction, which is why I think there is a particularly compelling case for a legislative requirement.

8 pm

I was going to ask my noble friend Lady Drake the other question, but perhaps I should ask the Minister instead. In doing so, I declare an interest as the honorary vice-president of NEPACS, a charity in the north-east that works with prisoners' families. I visited an excellent visitor centre and for the first time became aware of the plight of grandparents who suddenly find themselves—almost literally overnight—taking children home with them from a court. Many told me they had thought their child-caring days were long gone. I was very struck by that. I am not sure from the wording of the amendment whether that group will be covered. A number of kinship carers take care of grandchildren because their own child, the principle carer, is in prison. Will the Minister consider making sure that this group is covered in any solution he finds?

Baroness Hayter of Kentish Town: You are not allowed to demonstrate things in the House, but I now have to tear up my speech. I have never been so pleased to do so, I have to say. We should thank the Minister both for what he said and for coming in so early to make those comments. I really am going to tear it up and only add two things. One is to reconfirm what has been said. What he is looking at is undoubtedly in the best interests of the children and of the state, because it is a good investment for the future. As the Minister recognised, we are often talking about older children—I think that children over 12 make up a higher proportion of those in kinship care than those in the wider population, so perhaps we are talking about a different group here.

The only other thing I will add is that he talked about discussing this with others. My noble friend Lady Drake spoke about talking to BIS—an elegant name—about the rights-at-work issue. However, the DWP policy on kinship care is a bit out of kilter with that of the Department for Education, with the latter promoting family-and-friends care as a first option for children needing alternative care. It would therefore be useful—I am sure that the Minister has it already in mind—to talk to the DfE about these proposals. Given the involvement of local authority social work staff, who are often the brokers in setting up an arrangement that can lead to a child being taken into care, tying them in as well would be useful. Therefore, it means including the DCLG as well as the other departments to get a joined-up approach to this.

I think that the Minister used the word "clarity". Whether kinship carers know the situation before they take the momentous decision to take in a child will be key. That probably means statutory provision rather than just guidance, to give that security to someone taking on what is often a lifetime commitment. As all noble Lords who are parents know, children do not even grow up at 18. Even 30 year-olds have not grown up. It is a lifetime commitment. We very much welcome the comments that have been made.

Baroness Drake: First, I will respond to the comments made by the Minister. I fully recognise that he has shown a real interest in this community of family-and-friend carers; and that his interest was shown before any prompting by this amendment. It seeks to ensure that his resolve stays firm and to push him firmly into including something in the Bill to address this community. I welcome his positive response this evening.

Guidance does not do it; it will not be acceptable. It may be imposed, but that is not where I, or those who are interested in this issue, want to be. Nor do we want case-by-case consideration. It does not give the clarity

of treatment, the confidence, or the protection that this community should have when they take on children. I agree with my noble friend Lady Lister that if something firm could come from the Government on this before the Bill leaves the House, it would be warmly welcomed. I wish to push the Minister, between now and the appropriate stage of the Bill, to reflect on something firm that could be placed on the record.

In response to my noble friend Lady Sherlock's point, I must be honest and say that in drafting the amendment I was conscious of balancing the needs of a community with people's concerns about more informal arrangements for the care of the child. This amendment specifically addresses a community of carers where there is a legal order.

My noble friend is right that, particularly if parents are, for instance, taken to prison, there could be an immediate effect of children needing to be looked after, even if subsequently there is a legal process to follow. Perhaps the Minister could reflect on the weakness of my amendment, which I will address at a later stage.

Lord Freud: If I can wrap up, in anticipation of the noble Baroness, Lady Drake, wrapping up: I take on board the points. In fact I make a point which should cheer up noble Lords, in that the DWP process is more flexible than these legal orders. We can do things to support kinship carers without this huge paraphernalia, and that is one of the areas I am looking at. We can do it just by understanding that that is where the child is, and we do not need all these processes.

In that way, we are doing something way ahead of the concerns of this particular amendment. I know I am being pushed; I am not sure about timing, because of negotiations, but I can do something narrow. To the extent that we want to go broader for this community, these things take time but I am on the case. That is all I can say.

Baroness Drake: At the request of the Minister that I wrap up, I duly wrap up, and agree to withdraw my amendment.

Amendment 51D withdrawn.

Amendments 51DA to 51E not moved.

Amendment 51EZA

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

51EZA: Clause 19, page 9, line 36, at end insert—

"( ) Regulations shall prescribe how these regulations would operate, and impact on members of a couple."

Lord McKenzie of Luton: This is another set of amendments that are probing amendments only, and should be straightforward for the Minister. It may be easier for him to commit to write. The probe is about getting clarity on conditionality and couples. It relates to the whole hierarchy of the circumstances where there is no work-related requirement, there are work-focused interview requirements, work preparation, work search and work availability.

We understand that the principle is that each member of a couple will have an independent conditionality determined according to their circumstances, although there will be situations—for example, for couples with young children between the ages of five and 12—where couples can nominate a principal carer to be treated as a lone parent for conditionality purposes. That seems to be the situation as I understand it, even in circumstances where the one with the more onerous conditionality requirements can opt for that position. As we discussed earlier, this is notwithstanding that the joint income of the couple is taken into account; for example, in determining whether the conditionality threshold is reached. Sanctions will apply on an individual basis but obviously will be withheld from the couple claim.

There are doubtless all sorts of other nuances in this. I am just keen to get clarity on all of those things. If it is easier for the Minister to write, so be it but if he has got something there, that would be good. I beg to move.

Lord Freud: My Lords, given the time, rather than try to rush the next amendment, instead of writing I will go through the answers on this probing amendment.

As we increase support to make work pay, it is right that, where they are able, individual claimants do everything they reasonably can to find or prepare for work. In the current system, the support people can access and the requirements they have to meet depend to too great an extent on the benefit they or their partner claim. In the out-of-work benefits it is often the case that one member of a couple makes the claim and will be subject to conditionality. But their partner is not really considered and is not subject to any meaningful conditionality; for example, the partner of an ESA claimant may be fully capable of work but we do not ask them to take steps to find employment. Clearly this cannot be right.

Under universal credit we want to change this. We want to encourage and support all claimants who can work to take all reasonable steps to do so. Consequently, under universal credit conditionality will be applied to claimants on an individual basis. We will be able to ask each member of a couple, in a benefit unit that falls under the conditionality threshold, to meet work-related requirements. These will be tailored in line with their personal capability and circumstances. This includes taking account of any physical or mental conditions or caring responsibilities an individual may have.

Where a couple have children, they will be able to choose a nominated carer who will have access to the same limitations to requirements as a lone parent; for example, where the child is under five the nominated carer will fall into the group subject to a work-focused interview requirement only. Where they are work-ready, the other member of the couple will fall into the group subject to all work-related requirements and be expected to look and be available for work. As indicated in the policy briefing note published on work search and availability requirements, a couple may choose not to nominate, allowing scope for couples to share childcare and work responsibilities.

We are carefully considering the detail of how the nomination process will be implemented and, where necessary, we have scope to draft regulations. However,

[Lord Freud]
we do not believe any additional regulations are necessary to operate a conditionality regime where requirements are applied to claimants as individuals. To try and spell out in legislation all the permutations of different couples' requirements would be complicated and inflexible. I hope I have explained the context of this adequately. If there are other issues, we can go to writing but I thought it was worth getting the core of this on the record. On this basis, I beg the noble Lord to withdraw his amendment.

Lord McKenzie of Luton: I am grateful to the Minister for that response. I am happy to withdraw the amendment.

Amendment 51EZA withdrawn.

Clause 19 agreed.

Clause 20 : Claimants subject to work-focused interview requirement only

Amendment 51EZB not moved.

Clause 20 agreed.

Clause 21 : Claimants subject to work preparation requirement

Amendment 51EZC not moved.

Clause 21 agreed.

Lord De Mauley: My Lords, I know that noble Lords will want to go on but I have to disappoint them. I suggest that this would be a convenient moment to adjourn the Committee until 3.30 pm on Tuesday.

The Deputy Chairman of Committees: The Committee stands adjourned.

Committee adjourned at 8.14 pm.

Written Statements

Wednesday 26 October 2011

Council of Europe: Committee of Ministers

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My honourable friend the Minister of State (David Lidington) has made the following Written Ministerial Statement.

On 7 November, the UK takes over from Ukraine the chairmanship of the Committee of Ministers of the Council of Europe. The chairmanship is a rare opportunity for the UK to play a leading role in the vital work of the Council of Europe in promoting rights, democracy and rule of law across the continent.

The Council of Europe is dedicated to the protection and promotion of human rights, the rule of law and democracy across 47 countries and 800 million citizens. The UK was a founder member in 1949, and the first country to ratify the European Convention on Human Rights (ECHR), the Council of Europe's best-known instrument, two years later. The ECHR was developed in post-war Europe to try to offer people basic protections from tyranny—such as the right to life, freedom from torture and freedom of speech. These rights are still fundamentally important today.

Yesterday I met Thorbjørn Jagland, Secretary-General of the Council of Europe, to discuss the UK's chairmanship priorities. I am pleased to say that he supports fully our proposals. Each incoming chairmanship issues a priorities document shortly before their tenure begins. I have now done so and have placed a copy in the Library of the House.

The overarching theme of our chairmanship will be the protection and promotion of human rights. The Government have repeatedly made it clear that human rights are central to their foreign policy. We aim to be an example of a society that upholds human rights and democracy, and we are committed to strengthening the rules based international system.

First and foremost, we will drive forwards the ongoing programme of reform of the European Court of Human Rights. The court is an essential part of the system for protecting human rights across Europe. But it is struggling with its huge, growing backlog of applications—now over 155,000. At times it has been too ready to substitute its own judgment for that of national courts and parliaments. This situation undermines the court's authority and effectiveness.

Concrete measures to improve the court's efficiency are urgently required. Moreover, it should be focusing on areas where the convention is not being properly applied or there is a need at European level for authoritative guidance on the correct interpretation of the convention. Where member states are applying the convention effectively, the court should intervene less.

With the joint leadership of my right honourable friend the Secretary of State for Justice, under our chairmanship we will seek agreement to a package of reforms which would: help deal with the court's backlog; support better implementation of the convention at national level; introduce new rules or procedures to help ensure that the court plays a subsidiary role where member states are fulfilling their obligations under the convention; and help to ensure the best possible procedures for selecting judges to the court and promote consistency of judgments.

Reform requires the agreement of all 47 member states. We will accord the highest political priority to securing consensus to the necessary reforms by means of a political declaration at the end of our chairmanship. This declaration will set out the agreements we have reached on the reforms to be implemented, including—where necessary—by amendments to the procedural sections of the convention.

In addition, I have assured the Secretary-General that the UK will actively support his programme of reforms of the Council of Europe. We will work towards implementation of measures which will help to deliver more focused, streamlined and effective organisation and a more efficient budget.

The UK chairmanship will also give priority to a range of initiatives where we believe the Council of Europe can help to advance the UK's foreign policy objectives:

we will promote an open internet, not only in terms of access and content but also freedom of expression. This is an important policy priority for the UK and one of the issues being addressed at the Cyber conference being hosted in London by the Foreign Secretary on 1 November. We will support the adoption of the draft Council of Europe strategy on internet governance, and the implementation of the principles it has adopted to uphold freedom of expression on the internet, to ensure that all member states live up to their international obligations in this area;

we will work to combat discrimination on grounds of sexual orientation or gender identity across Europe. The Government are committed to using their relationship with other countries to push for unequivocal support for the rights of lesbian, gay, bisexual and transgender people, including advocating for changes to discriminatory practices and laws that criminalise homosexuality in other countries. The Council of Europe has adopted recommendations on this issue and conducted a study on the situation in member states. We will work with the secretariat and our partners in the Committee of Ministers to improve all member states' performance in this area;

we will work towards a more effective and efficient role for the Council of Europe in supporting local and regional democracy. The Council of Europe has a significant programme of activities in this area, including monitoring and sharing of expertise, which the UK supports but wants to see streamlined and more carefully targeted; and

we will support the strengthening of the rule of law in the member states. We will work towards practical recommendations in this area, in co-operation with our partners in the Committee of Ministers, the secretariat and the Council of Europe's advisory body on constitutional matters the European Commission for Democracy through Law (the Venice Commission).

EU: Environment Council

Statement

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Taylor of Holbeach): My right honourable friend the Secretary of State has today made the following Statement.

My right honourable friend the Secretary of State for Energy and Climate Change (Chris Huhne) and I represented the UK at the Environment Council in Luxembourg on 10 October. Stewart Stevenson, Scottish Minister for Environment and Climate Change, also joined the delegation.

Following lengthy debate, the council adopted conclusions on preparations for the 17th session of the conference of the parties to the United Nations Framework Convention on Climate Change and the 7th session of the meeting of the parties to the Kyoto Protocol in Durban. The text signals the EU's continued openness to a second commitment period of the Kyoto Protocol as part of a transition to a wider legally binding framework, and sets out the EU's negotiating position on the range of other issues in the negotiations.

Ministers also adopted conclusions setting out the EU's high-level position ahead of the Rio+20 conference next year. These send a clear political signal that the EU wants the conference to be a success. I emphasised the need for Ministers to focus on the EU's strategic objectives for Rio+20 and the need for the conference to produce concrete outcomes in order to move us towards a genuine green economy.

Recently I attended the Delhi ministerial meeting on Rio+20. There was broad consensus that delegations have little appetite for simply agreeing a long-winded communiqué at Rio—they want action and implementation. The main outcomes of the Delhi meeting were: widespread agreement on the need for specific measures to make the transition to a greener global economy; recognition of the strong links between climate change, biodiversity and poverty reduction, and their importance for growth; agreement on the need to strengthen international environmental governance; and considerable interest in the Colombian proposal for sustainable development goals. Food security and sustainable agriculture, energy security and energy access, and resource efficiency were all identified as key themes for the Rio+20 summit.

The Environment Council also adopted conclusions on the review of the 6th environment action programme (EAP) and looking forward to the 7th. In this context, the Commission presented its roadmap towards a resource-efficient Europe, making it clear that they saw this as a comprehensive issue, covering much of the Commission's work on environment, climate and energy. Both issues were discussed by Ministers over lunch, with several Ministers emphasising the need to focus on implementation of existing legislation rather than new initiatives in developing a future framework.

The council adopted conclusions and a council decision setting out the position of the EU and its member states ahead of the 10th meeting of the conference of the parties to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal which will, among other things, discuss the mechanism for entry into force of the "ban amendment".

The aviation emissions trading scheme was discussed under other business: the Commission encouraged member states to vigorously defend the legislation and counter some of the misunderstanding evident among others. Chris Huhne agreed with their approach and reiterated the UK's full support for the directive.

EU: General Affairs Council

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My honourable friend the Minister of State (David Lidington) has made the following Written Ministerial Statement.

I attended an extraordinary meeting of the General Affairs Council (GAC) on 22 October in Brussels.

The GAC was chaired by the Polish EU presidency (Mikolaj Dowgielewicz, State Secretary for European Affairs). A draft record of the meeting can be found at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/125491.pdf.

Ministers reviewed preparations for the October European Council, the outcome of which my right honourable friend the Prime Minister reported to Parliament on 24 October.

Additionally, Ministers agreed new general arrangements for the delivery of EU statements in multilateral organisations. The document setting out these arrangements can be found at: http://register.consilium.europa.eu/pdf/en/11/st15/st15901.en11.pdf.

I have written to the chairs of the Scrutiny and Select Committees to provide further detail on this agreement. I have placed in the Libraries of both Houses copies of the general arrangements and the text of a UK statement for the minute.

I will also continue to update Parliament on General Affairs Councils.

EU: Justice and Home Affairs Council

Statement

The Minister of State, Ministry of Justice (Lord McNally): The Justice and Home Affairs Council is due to be held on 27 and 28 October in Luxembourg. My right honourable friend the Minister of State for Immigration (Damian Green), my right honourable friend the Secretary of State for Justice (Kenneth Clarke) and the Scottish Lord Advocate Frank Mulholland will attend on behalf of the United Kingdom. As the provisional agenda stands, the following items will be discussed:

The council will begin in mixed committee with Norway, Iceland, Liechtenstein and Switzerland (non-EU Schengen states). There will be an update on the Commission-led project to implement the central element of the second generation Schengen Information System (SIS II); the UK will continue to reiterate its support for the continuation of the current SIS II project.

Next the Commission will give an update on the rollout of the central visa information system (VIS). The UK is not bound by the VIS regulation because it does not participate in the common visa element of the Schengen acquis.

The Commission will present and invite an exchange of views on whether member states can support the legislative instrument amending Regulation (EC) NO 1931/2006 as regards the inclusion of the Kaliningrad area and certain Polish administrative districts in the eligible border area. The UK is not bound by this regulation since it relates to that part of the Schengen agreement in which the UK does not participate.

There will be a presentation by the Commission on its communication on smart borders. The communication addresses options, implications and possible ways forward in developing both a European entry/exit system and a registered traveller programme (brought together under the heading of smart borders). The initiatives will rely on developing technologies to expedite border crossings for regular travellers while maintaining the security and the integrity of border controls. They aim to include technical infrastructure issues, data protection aspects and the costs incurred in developing and operating both systems, which are aimed at third-country nationals crossing the Schengen external borders. The UK is excluded from both the measures since it does not participate in the common visa element of the Schengen acquis.

There will also be the signature of the mobility partnership between the EU and Armenia by those member states who will participate in this partnership. The UK has no plans to participate and will not take part in the signing of the partnership.

The main council will start with a state of play discussion on the progress of the dossiers forming the second phase of the common European asylum system (CEAS). This has been a regular item at recent JHA Councils as the deadline for agreeing the dossiers in 2012 approaches. The UK does not support a common asylum system involving further legislative harmonisation, but we do support practical action to secure effective asylum systems, including returns. While we do not believe that further legislation setting common standards is the way to achieve this, we will work with member states to make sure any new legislation is as practical as possible and can be implemented on the ground.

There will be state of play discussions on two directives presented by the presidency. The first concerns a single application procedure for a single permit for non-EU member nationals to reside and work in a member state and on a common set of rights for non-EU member workers legally residing in a member state. The second deals with minimum standards for the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted. Both of these directives have reached agreement in principle within the council, however there is an outstanding issue of correlation tables that needs to be resolved with the European Parliament. The UK has not opted into either of these instruments.

There will be a progress report on Greece's national action plan on asylum reform and migration management. The UK will take the opportunity to acknowledge the improvements that have taken place, while putting pressure on Greece to step up the pace of reform and to tackle its unacceptable detention facilities for asylum seekers.

There will then be a presentation by the Commission and a first exchange of views on the Commission communication on the integration of third-country nationals, which was published on 20 July. There are no immediate legal or legislative implications; integration strategies are a matter of national competence and the communication acknowledges this. The communication is broadly in line with the UK's views on integration: we welcome the emphasis on a flexible approach including action at local and national level, acquisition of language skills and recognition that integration is a two-way process (migrant and host country).

Over lunch we expect Ministers will discuss an Austrian-Hungarian joint paper on illegal migration and visa liberalisation, with a particular focus on the western Balkans. Discussion will also include illegal immigration via the southern Mediterranean, and in particular current developments in Libya and Tunisia, requested by Italy. The UK will raise the need to tackle abuse of free movement, including sham marriages.

The Commission will also present its communication "Towards a stronger European response to drugs" and there will be a discussion on the draft European pact against synthetic drugs. The presidency will look to agree the draft text of the pact. The UK welcomes the priority that the presidency has given to this important issue and approves of the draft text in the pact. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) will also present its 2011 annual report on the state of the drug problems in Europe.

There will be an orientation debate on options for a European terrorist finance tracking system (TFTS) on the basis of a Commission communication which was published in July. This meets a commitment to the European Parliament to consider the feasibility of an EU system following the adoption last year of the EU-US terrorist finance tracking programme (TFTP). The Government's view is that the necessity of an EU system has not yet been demonstrated. There are also important questions around legal base, operational requirements and costs that are yet to be adequately answered. As such the Government do not believe they can choose between any of the available options at this stage. The UK will make clear that no decision can be taken on a way forward without first seeing a full impact assessment of each of the options (including the option of maintaining the status quo). This assessment must address the questions about necessity of an EU system; about the technical, legal and operational issues involved; and about the likely high costs.

The Commission will be presenting its communication on co-operation in the area of the JHA within the Eastern Partnership (EaP). The communication sets out proposals on how to strengthen JHA co-operation with the EaP countries, and the UK endorses the pragmatic focus on the consolidation and streamlining of existing frameworks. Promoting EU engagement with the EaP remains a priority for the Polish presidency, and the UK recognises the importance of offering continued support to the EU's neighbours. There has been broad support for the communication so far and

a general consensus that new structures are not required. The presidency is expected to prepare draft council conclusions after an exchange of views at the council.

Finally, the presidency will make a presentation on the state of play of the negotiations for an EU-US data protection agreement. The council agreed a negotiating mandate at the 2010 December council.

The Justice day will begin with the Commission presenting its newly published regulation on a EU common sales law. This issue was discussed in general terms at the informal JHA Council on 19 July and this will be an opportunity for the Commission to explain its proposed action. Over lunch there will be a further discussion of some aspects of sales law.

There will then be a discussion regarding the draft directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest. This is the third proposal on the EU's criminal procedural rights roadmap which sets minimum standards for the rights of the defence. This measure was presented at the September JHA Council when the UK informed the council that it had not opted in to this directive.

Next, there will be an orientation debate on the draft directive on establishing minimum standards on the rights, support and protection of victims of crime. The UK has opted in to this draft directive.

The presidency will also provide a state of play update on the draft directive on combating the sexual abuse, sexual exploitation of children and child pornography. A general approach was reached on this proposal at the JHA Council in December 2010.

Finally, under non-legislative activities, there is an item regarding judicial training. A Commission communication was published in September and the Commission made a presentation at the last council meeting. It is expected that the council will be asked to agree the draft council conclusions on the Commission's communication.

Women: Peace and Security

Statement

The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford): My honourable friend the Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (Henry Bellingham) has made the following Written Ministerial Statement.

I wish to inform the House that the Foreign and Commonwealth Office, together with the Ministry of Defence and the Department for International Development, is today publishing an annual review of the UK Government National Action Plan on UNSCR 1325 Women, Peace and Security.

This Government published a revised National Action Plan (NAP) on UNSCR 1325 Women, Peace and Security on 25 November 2010 and the annual review focuses on the commitments that the Government have taken forward since that time.

We are grateful to the Associate Parliamentary Group on Women, Peace and Security (APG WPS) and the civil society umbrella organisation Gender Action on Peace and Security (GAPS) for the regular and ongoing consultations that take place about the NAP. Officials will attend a meeting with the Associate Parliamentary Group and GAPS on 31 October to discuss this review.

This Government intend to produce a revised NAP at the start of 2012 taking into account the recommendations we receive from APG WPS and GAPS. A full evaluation of the NAP is scheduled to take place in 2013.

I have deposited a copy of the annual review in the Libraries of both Houses. It is also available on the FCO website at www.fco.gov.uk.

Written Answers

Wednesday 26 October 2011

Afghanistan

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what are their objectives for December's Bonn conference on Afghanistan. [HL12495]

Lord Wallace of Saltaire: The Bonn conference on Afghanistan will be hosted by Germany and chaired by the Government of Afghanistan. It will focus on three main themes: the political process; the international community's long-term relationship with Afghanistan; and the civilian aspects of transition. Our objectives are for the conference to revitalise the Kabul Process, make progress on the political track, and reiterate the international community's long-term commitment to Afghanistan. We are working with the Afghans and our international partners to help ensure that the conference will be a success and we look forward to participating.

Airports: Runways

Question

Asked by ***Lord Soley***

To ask Her Majesty's Government what discussions they have had with representatives of the Government of China, Chinese airlines, and the deputy administrator of the Civil Administration of China about the expansion of runway provision in south east England; and what was their response. [HL12461]

Lord Wallace of Saltaire: Government officials have discussed runway provision, as a factor contributing to the availability of landing slots at Heathrow, with the Chinese Civil Aviation Authority and Chinese airlines on several occasions. Chinese officials have made representations calling for additional landing provision at Heathrow in order to enable direct flights. We have not received representations on runway expansion specifically, either at Heathrow or elsewhere in the UK.

Armed Forces: Aircraft

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government what plans they have to pursue the suggestion by the United States Chief of Naval Operations for co-manning of United States Naval maritime patrol aircraft. [HL12394]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): The Chief of the Air Staff has accepted an offer from the United States Navy to place Royal Air Force personnel into the United States Navy maritime patrol and reconnaissance aircraft community. Discussions are ongoing with the United States Navy to agree the details of how best to exploit the UK's maritime patrol aircraft experience for the benefit of both nations.

Aviation: Passenger Duty

Question

Asked by ***The Duke of Montrose***

To ask Her Majesty's Government whether they will consider reducing air passenger duty as a means of alleviating the impact of the application of the European Emissions Trading Scheme. [HL12440]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government undertook a consultation on the UK's air passenger duty from 23 March to 17 June 2011. The Government are reviewing the considerable number of responses submitted by interested parties and will publish a summary of responses later this autumn.

The Government believe that the entry of aviation into the EU Emissions Trading Scheme from 1 January 2012 offers a good prospect for ensuring aviation meets its obligation to reduce global CO_2 emissions.

Azerbaijan

Question

Asked by ***Baroness Goudie***

To ask Her Majesty's Government whether they have sent congratulations to the Republic of Azerbaijan on the occasion of the 20th anniversary of its independence on 18 October. [HL12524]

Lord Wallace of Saltaire: The Queen sent a letter of congratulation to President Aliyev to mark Azerbaijan's national day on 28 May. Government representatives have participated in events to mark the 20th anniversary of Azerbaijan's independence on 18 October.

Bangladesh

Question

Asked by ***Lord Avebury***

To ask Her Majesty's Government whether they have made representations to the United Nations Working Group on Enforced or Involuntary Disappearances regarding requesting that the group should ask the Government of Bangladesh for an invitation to visit the state in good time for the group to submit a report for consideration by the Universal Periodic Review of Bangladesh in 2013. [HL12476]

Lord Wallace of Saltaire: The UK has a policy of accepting all requests for visits by all special procedures of the UN Human Rights Council and regularly calls upon other UN member states to adopt a similar policy, as well as to accept specific requests for country visits. We believe it is important to respect the

independence of UN special procedures in determining which countries they prioritise for country visits and have not therefore made representations. We are not aware of any outstanding request for a visit to Bangladesh by the UN Working Group on Enforced or Involuntary Disappearances. We are aware that Bangladesh did not accept recommendations made to it by three countries with regard to visits by special procedures during its universal periodic review in 2009.

Banking: Northern Rock

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether NBNK Investments plc has been released from restrictions placed on its bidding for Northern Rock; and, if so, when NBNK was advised of this release; and when they received information on Northern Rock covered by a confidentiality agreement. [HL12539]

The Commercial Secretary to the Treasury (Lord Sassoon): We are continuing to explore the sale of Northern Rock in the best interest of the taxpayer. The Government are unable to comment on the specifics of individual parties.

China

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what tangible benefits to the United Kingdom there have been as a direct result of the trade delegation to China led by the Prime Minister in November 2010. [HL12466]

Lord Wallace of Saltaire: Since November 2010, including the visit by my right honourable friend the Prime Minister to China, over 50 commercial signings worth more than £4.83 billion have been witnessed by Ministers or linked to ministerial visits. These visits are also used further to encourage China to open its domestic markets.

The Prime Minister's visit to China in November 2010 emphasised the UK and China as partners for growth, indicating the complementary nature of our two economies which, if exploited to the full, will provide a boost to both countries' growth.

To demonstrate the significant potential for collaboration, the UK and China agreed to increase the value of bilateral trade (goods and services) by 2015 to US$100 billion a year. Within this the UK intends to raise exports to China to US$30 billion per year over the same period.

Cyprus: Oil and Gas

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government what assessment they have made of the Turkish Cypriot Leader, Dr Dervish Eroglu's four points proposal for settlement of the oil and gas exploration issue, presented to the United Nations Secretary General Ban Ki-moon during their meeting in New York on 24 September. [HL12516]

Lord Wallace of Saltaire: The UK is aware of the Turkish Cypriot proposal on the oil and gas exploration issue. It is for the leaders of the two communities to work together on any proposals to share the potential revenue from any oil or gas found in Cyprus's exclusive economic zone.

Drugs: Lethal Injections

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what representations have they made to other European Union member states and the European Commission regarding implementing a Union-wide ban on the export of drugs to be used for executions by lethal injection. [HL12497]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): At the request of my right honourable friend the Secretary of State, the head of the export control organisation within the Department for Business, Innovation and Skills wrote to the European Commission on 30 November 2010 to inform it that the UK had introduced national controls on the export of the drug sodium thiopental to the United States of America for use in lethal injection, and to make the case for the Commission to consider the introduction of equivalent EU-wide controls on the export of that drug.

Following the Government's decision to extend national controls to the other drugs that currently appear in the lethal injection protocols of some states in the United States, my honourable friend the Minister of State for Business and Enterprise wrote to the Commission on 12 April 2011, giving it notice of the UK's intention to introduce further national controls but reiterating that our preferred solution would be for an EU-wide control on the export of specified drugs to the United States (and indeed any other country that practises execution by lethal injection).

Education: Careers Advice

Question

Asked by ***Lord Janner of Braunstone***

To ask Her Majesty's Government what improvements they will be making to careers advice services offered in the secondary education sector. [HL12308]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): Subject to the passage of the Education Bill, schools will be under a duty to secure access to independent and impartial careers guidance for their pupils from September 2012. The guidance should contain information on the full range of 16 to 18 education or training options, including apprenticeships. Schools are free to determine how to fulfil the duty based on the needs and circumstances of their students.

The department will publish statutory guidance to support schools in fulfilling their new duty. This will set a clear expectation that schools should secure face-to-face careers guidance where it is the most suitable support, in particular for disadvantaged children and those who have special needs. The guidance will also contain a clear description of the quality standard for careers guidance so schools have relevant information when they are commissioning independent support for their pupils.

An assessment of the effectiveness of careers guidance should focus on outcomes, not inputs. We will look to schools to ensure that their pupils achieve and progress and monitor this by publishing data on the destinations that pupils move on to after school.

Egypt

Question

Asked by ***Lord Alton of Liverpool***

To ask Her Majesty's Government what assessment they have made of the reports sent to Lord Howell of Guildford by Lord Alton of Liverpool detailing continuing violence and intimidation directed at Egypt's Coptic community. [HL12368]

Lord Wallace of Saltaire: There has been a resurgence of violence between Christians and Muslims in Egypt. The Coptic community has been calling for greater protection, equality and new legislation. We have raised our concerns about the dangers of sectarianism and extremism in Egypt with the authorities and urged that respect for human rights be enshrined in the constitution, including guarantees for minority rights.

On 10 October my right honourable friend the Foreign Secretary issued a statement expressing his deep concern over the unrest and the loss of life that took place in Cairo on 9 October. He urged all Egyptians to refrain from violence, support the Egyptian Prime Minister's call for calm. and for all sides to engage in dialogue. He said that the freedom of religious belief needs to be protected and that the ability to worship in peace is a vital component of a democratic society.

European Court of Human Rights

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government who were the three nominees submitted to the Parliamentary Assembly of the Council of Europe in 1998 to enable it to choose the British judge at the European Court of Human Rights; what will be the process for selection of nominees when Sir Nicolas Bratza is replaced next year; and whether the three nominations will be made public. [HL12530]

The Minister of State, Ministry of Justice (Lord McNally): The three nominees submitted to the Parliamentary Assembly of the Council in 1998 were (as titled at that time):

Nicolas Bratza QC;

Mr Justice (Sir Robert) Carnwath; and

Robert Reed QC.

This information is publicly available on the Parliamentary Assembly's website at: http://assembly.coe.int//Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/doc98/Edoc7985.4.htm.

The process for selection of nominees when Sir Nicolas Bratza is replaced next year will follow the model used in 2009 and will be an open competition, conducted by a five strong panel.

The three nominations will be published on the Parliamentary Assembly's website once our selection process has finished and the nominations have been transmitted to the Council of Europe.

Finance: Credit Easing

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether residential mortgage-backed securities linked to sales of new homes will qualify for purchase under quantitative easing or credit easing. [HL12469]

The Commercial Secretary to the Treasury (Lord Sassoon): In his letter to the Governor of the Bank of England on 6 October 2011, the Chancellor of the Exchequer confirmed that the asset purchase facility (APF) continues to include facilities for the purchase of private sector assets up to a maximum of £50 billion. Private sector assets, which are eligible for purchase by the asset purchase facility (APF), are set out in the letter of 29 January 2009 sent by the previous Chancellor of the Exchequer to the Governor of the Bank of England. Eligible private sector assets include paper issued under the credit guarantee scheme, corporate bonds, commercial paper, syndicated loans and asset backed securities.

The Chancellor of the Exchequer will provide more details on credit easing at the autumn statement on 29 November.

Government Departments: Consultants

Questions

Asked by ***Lord Ashcroft:***

To ask Her Majesty's Government how much was spent by the Department for International Development on consultants in the United Kingdom in each year since 1997. [HL12405]

To ask Her Majesty's Government how much was spent by the Department for International Development on consultants overseas in each year since 1997. [HL12406]

Baroness Northover: The Department for International Development (DfID) spend on consultants in each financial year since 2007-08 is set out in the table below. The total spend figures cannot be broken

down between UK and overseas without incurring disproportionate cost. Information on a comparable basis is not available prior to 2007-08.

Year	*Consultancy Spending £'000s*
2007-08	21,200
2008-09	24,500
2009-10	19,100
2010-11	1,406

The drop in spend for 2010-11 is due to application of the central government definition of consultancy and the introduction of a stringent business case process to ensure consultancy is managed effectively and approved only where it is deemed to be an operational necessity.

Government: Ministerial Code

Question

Asked by ***Lord Myners***

To ask Her Majesty's Government whether they have any plans to revise the Code on Ministerial Conduct. [HL12470]

Lord Wallace of Saltaire: The *Ministerial Code* published by the Prime Minister sets out the standards of conduct expected of Ministers. The Prime Minister recently agreed to amend the code to include publication of all meetings with newspaper and other media proprietors, editors and senior executives. This information has been published for Cabinet Ministers back to May 2010. It is being published routinely for all Ministers as part of the quarterly publications by departments. The code is normally revised and reissued after a general election.

Government: Ministerial Meetings

Question

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

To ask Her Majesty's Government what meetings have been held since the formation of the coalition Government between Ministers in the Cabinet Office and external organisations engaged in commercial lobbying at which the issue of transparency in lobbying activities was discussed; with whom those meetings were held; and on what dates. [HL12554]

The Minister of State, Ministry of Justice (Lord McNally): The Government publish details of Ministers' meetings with external organisations routinely. The Cabinet Office publishes this data online at: http://www.cabinetoffice.gov.uk/resource-library/ministerial-gifts-hospitality-travel-and-meetings-external-organisations.

Government: Residences

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government what is the annual cost to the taxpayer of Chequers and Chevening. [HL12393]

Lord Wallace of Saltaire: Chequers is administered by independent trustees who receive an annual grant from the Cabinet Office towards its maintenance and to cover civilian staff employed at Chequers in accordance with the Acts.

Information about the grant for 2011-12 will be included in the annual Cabinet Office report and accounts which will be published at the end of the financial year.

Chevening House is owned and administered by a private trust. Some residual costs are met by the public purse. For the financial year 2010-11 these total £3,695, excluding security costs.

Health: Podiatry

Questions

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what is their estimate of the number of preventable diabetes-related foot and lower limb amputations carried out each year in the United Kingdom. [HL12585]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): We do not hold this information centrally, but in the case of England, we accept the estimates given on the NHS Choices website. This reports that there are, on average, 73 lower limb amputations a week in England because of complications of diabetes, of which 80 per cent are potentially preventable.

Asked by ***Lord Morris of Manchester***

To ask Her Majesty's Government what action they are taking to ensure that there are sufficient podiatrists to reduce the number of preventable diabetes-related foot and lower limb amputations carried out each year in the United Kingdom. [HL12586]

Earl Howe: It is for local National Health Service organisations to commission a comprehensive service for people with diabetes that includes podiatry services. Workforce planning is also a matter for local NHS organisations, on the grounds that they are best placed to assess the health needs of their local health community against guidance on good practice, and plan the workforce to meet those needs.

In March 2011, the National Institute for Health and Clinical Excellence (NICE) published a guideline for the care of people with diabetic foot problems in hospitals. The guideline recommends that a multidisciplinary foot care team should manage the care pathway of patients with diabetic foot problems who require inpatient care, and that that team should normally include a podiatrist.

NICE has also published a commissioning guide for a foot care service for people with diabetes, and a clinical guideline on the prevention and management of foot problems for Type 2 diabetes.

Health: Resuscitation

Question

Asked by ***Lord Harrison***

To ask Her Majesty's Government what assessment they have made of concerns raised by Action on Elder Abuse about Care Quality Commission inspections and the use of "do not attempt resuscitation" notices. [HL12515]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): The Care Quality Commission (CQC) is the independent regulator of health and adult social care in England and as such is responsible for developing and consulting on its methodology for assessing whether providers are meeting the registration requirements. The CQC can take independent enforcement action where a provider is not meeting these requirements.

The CQC has advised that when carrying out the dignity and nutrition inspections, if it did identify what appeared to be poor practice, it brought the matter to the attention of staff on the ward and to the hospital's wider notice, on the day of the inspection or through its compliance reports.

Where concerns have been identified, these will also be noted on the CQC's quality and risk profiles, informing the CQC's future inspections.

Higher Education: Tuition Fees

Question

Asked by ***Baroness Randerson***

To ask Her Majesty's Government what discussions or correspondence they have had with Welsh Ministers about any potential Welsh Government liability for financial support for students from European Union countries studying at universities in England as a consequence of the Welsh Government's proposed tuition fee policy. [HL12655]

Baroness Verma: No such discussions have taken place between the Government and Welsh Ministers on this matter.

Homelessness: Rough Sleepers

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what is their assessment of the number of rough sleepers in London. [HL12546]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): Rough sleeping figures are published by the department on the DCLG website at the following link: http://www.communities.gov.uk/documents/statistics/xls/1845849.xls.

The Government have acted decisively to introduce a more accurate assessment of rough sleeping levels so that there is clear information in all areas, to inform service provision and action to address the problem. Previously only local authorities where there was a known, or suspected, rough sleeping problem were required to provide a count. All areas across England now provide counts or robust estimates giving a national picture. Latest statistics show 415 rough sleepers in London on any one night in autumn 2010.

This Government are committed to tackling rough sleeping and preventing homelessness. We have maintained the level of homelessness grant, with £400 million for local authorities and the voluntary sector in England over the next four years. A cross-departmental ministerial working group has been set up to address the complex causes of homelessness and improve support for homeless people. It has pledged that for the first time no one should ever need to experience a second night sleeping rough. We also recently announced £42.5 million for the Homelessness Change Programme in England which will provide around 1,400 new and improved bed spaces to improve hostels for rough sleepers and ensure that those coming off the streets get the support they need.

House of Lords: Staff

Question

Asked by ***Lord Laird***

To ask the Chairman of Committees what was the total cost of staff in the House of Lords in each of the past seven years. [HL12766]

The Chairman of Committees (Lord Brabazon of Tara): The total staff costs for each financial year are published in the House of Lords Resource Accounts available via http://www.publications.parliament.uk/pa/ld/ldresacc.htm.

For the past seven years the costs were as follows:

Year	*Staff costs*
2010-11	£23,286,000
2009-10	£21,883,000
2008-09	£22,964,000
2007-08	£20,976,000
2006-07	£19,651,000
2005-06	£16,547,000
2004-05	£15,535,000

The figures include wages and salaries, social security costs and pension costs, less recoveries in respect of outward secondments.

Houses of Parliament: Prorogation

Question

Asked by ***Lord Foulkes of Cumnock***

To ask Her Majesty's Government when they expect the current session of Parliament to end. [HL12428]

The Chancellor of the Duchy of Lancaster (Lord Strathclyde): The current Session of Parliament will end in spring 2012. The dates for prorogation and State Opening are conventionally announced shortly before the end of the Session.

International Year for People of African Descent

Question

Asked by ***Lord Boateng***

To ask Her Majesty's Government, further to the answer by Lord Howell of Guildford on 13 October at oral questions, what use they plan to make of the International Year for People of African Descent to deliver overseas development assistance in partnership with non-governmental organisations and the African diaspora, and to encourage conflict resolution on the African continent. [HL12450]

Baroness Northover: As Lord Howell said, the Government have no specific plans to mark the United Nations International Year for People of African Descent.

UK delivery of overseas development assistance includes working with civil society organisations and the African diaspora. DfID is committed to increasing its work, much of it related to conflict resolution, in fragile and conflict affected states. Civil society plays a vital role in supporting citizens to improve their lives. Civil society organisations are central to delivering services, enabling citizens to be more active in their development and ensuring that policies benefit ordinary people. Through our work with Comic Relief we are supporting the common ground initiative to increase funding to small and diaspora organisations to create real and sustainable change to some of the poorest and most disadvantaged communities in Africa. DfID is planning closer engagement with UK based African diaspora during the autumn and to build further on links already made including, most recently, with Somalian diaspora.

Iran: Public Execution

Question

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what representations have they made to the Government of Iran regarding outlawing the practice of execution by stoning. [HL12498]

Lord Wallace of Saltaire: The UK remains concerned by Iran's increasing use of the death penalty. Our embassy in Tehran and the Foreign and Commonwealth Office in London make regular representations to the Iranian authorities on their use of barbaric methods of execution, including stoning and suspension strangulation, urging Iran to cease their use and implement a moratorium on the death penalty. The UK is aware that approximately 12 people remain under sentence of stoning in Iran and we have made clear that these sentences must not be carried out and would invoke a strong international reaction if they were.

Justice: Third Party Litigation

Questions

Asked by ***Baroness Goudie***

To ask Her Majesty's Government what assessment they have made of the potential impact on businesses of a growth in third party litigation funding in legal cases. [HL12525]

To ask Her Majesty's Government what assessment they have made of the statement by Lord Justice Jackson that third party litigation funding is "beneficial and should be supported". [HL12527]

The Minister of State, Ministry of Justice (Lord McNally): The Government have not made any assessment of the potential impact of third party funding.

Third party funding is an arrangement whereby a third party with no direct interest in the proceedings agrees to fund litigation in return for a percentage of the damages awarded if the case is successful. I am aware that courts in England and Wales now recognise that some claimants are able to pursue claims through third party funding.

Following Lord Justice Jackson's recommendations, a working group at the Civil Justice Council has been working on a draft voluntary code of conduct for third party funders. I understand that, following an earlier public consultation, the working group expects to report shortly.

Ministry of Defence: Expenditure Cuts

Question

Asked by ***Lord Moonie***

To ask Her Majesty's Government how they intend to reduce the impact of Ministry of Defence changes in capability requirements and programme delays as a result of budgetary factors and procurement processes, as defined in the National Audit Office Major Projects Report 2009. [HL12395]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever): Significant work has been undertaken by the department to understand better the cost of the forward programme, and agreement has been reached with the Treasury for a real terms increase in the level of resources likely to be available for the equipment plan beyond the end of the current spending review period. This will give the department the necessary stability to plan on a long-term basis. The strategic defence and security review and the further work announced on 18 July 2011 (*Official Report*, cols. 643-645) has brought the defence programme broadly into balance, and the detailed implications are being worked through as part of the department's annual planning round.

We will set out our future policy on technology, equipment and support for defence and security in a White Paper later this year. The Chief of Defence Materiel is providing a materiel strategy for implementation from next year onwards. This is being

designed to ensure that we maximise the value we get from every pound we spend on defence equipment, to assist in balancing our demand to the available resources, and to equip our buying organisation, defence equipment and support, for the task it faces.

Morocco

Question

Asked by ***Lord Stevens of Kirkwhelpington***

To ask Her Majesty's Government what steps they are taking to support international efforts to broker a solution to the violence in Laayoune. [HL12511]

Lord Wallace of Saltaire: My right honourable friend the Foreign Secretary visited Morocco and Algeria between 16-19 October, where he discussed the situation in Western Sahara with the Governments of both countries.

Following UK efforts to encourage international support for human rights monitoring in Western Sahara, this year's Security Council Resolution stresses for the first time the importance of improving the human rights situation in Western Sahara and the Tindouf camps and encourages the parties to work with the international community to develop independent and credible measures to ensure full respect for human rights. The Security Council will discuss the situation in Western Sahara, including progress on implementing UN Security Council Resolution 1979, later this month.

British officials are closely involved in the enhanced dialogue conducted by the EU delegation in Rabat with human rights defenders from Morocco and Western Sahara. We will continue to raise these issues with Morocco.

National School of Government

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will offer alternative civil service employment to staff in the National School of Government to avoid redundancies when it is closed; and how many people are employed by the school and where. [HL12593]

Lord Wallace of Saltaire: The Cabinet Office will take all reasonable measures to avoid compulsory redundancies. Measures to assist staff to find other civil service jobs will include:

priority access for National School staff for Cabinet Office vacancies;

priority access to jobs within the wider Civil Service via the Civil Service single jobs portal;

exploration of redundancy swaps within the Cabinet Office and wider Civil Service to allow National School staff to take suitable jobs elsewhere when the current post holder would be prepared to exit the post on a voluntary basis;

contacting other government departments, particularly those with a presence in the Sunningdale Park area, to alert them to the fact that NSG has surplus staff; and

facilitating and supporting interdepartmental loans of staff where the Cabinet Office would remain the home department.

NHS: Primary Care Trusts

Questions

Asked by ***Lord Mawhinney***

To ask Her Majesty's Government what would be the outcome if an existing primary care trust and the primary care cluster board covering the same geographical area made contradictory or dissimilar decisions; and who would resolve the conflict. [HL12660]

To ask Her Majesty's Government what statutory basis would underpin any decision made by a proposed primary care cluster board. [HL12661]

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe): Each cluster of primary care trusts (PCTs) has a cluster chief executive who has been appointed as the accountable officer for each PCT within that cluster. This appointment will have been confirmed by each PCT board. The chief executive is expected to exercise the full range of responsibilities associated with being the accountable officer.

As stated in the *PCT Cluster Implementation Guidance*, published in January 2011, the role of the statutory boards of PCTs remains key. The guidance set out four potential models for PCT cluster governance to ensure that the statutory role of PCT boards continued to be respected. Early experience of PCT cluster working has suggested that in most localities model 2 within the guidance has most effectively and efficiently provided governance arrangements with absolute clarity about responsibility and accountability. Features of this model include:

a single board meeting transacting, as far as is practicable, the board business of all of the constituent PCTs;

a single executive team with single chief executive; and

a single individual as chair of the cluster.

A PCT cluster board can only take decisions in areas where a PCT board has delegated functions to it, and allows that delegation to continue. It is a key role of the cluster chief executive and their single executive team to resolve any differences between a PCT cluster board and any of the PCT boards.

Northern Cyprus

Question

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government whether they consider the community in the Turkish Republic of Northern Cyprus to be at peace or at war since the 1974 Turkish intervention that followed the Nicos Sampson-led EOKA-B overthrow of President

Makarios; and on what grounds the United Kingdom has maintained the subsequent unilateral embargo on the Turkish Cypriot community. [HL12305]

Lord Wallace of Saltaire: The UK considers that the status quo in Cyprus is unacceptable. We support all efforts to build co-operation. trust and mutual respect between the two communities on the island.

The UK supports the economic development of the Turkish Cypriot community, bringing it closer to Europe through both financial aid and trade liberalisation. The EU financial aid regulation, which is currently being implemented, represents the EU's biggest per capita aid programme. This regulation has allocated €259 million to fund projects in Northern Cyprus aimed at bringing Turkish Cypriots closer to EU standards and increasing the potential for future Cypriot reunification.

Northern Ireland: Human Rights Commission

Questions

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Shutt of Greetland on 7 September (*WA 32*), whether they will ask the Northern Ireland Human Rights Commission why its register of interests has not been updated for nine months; when the new chief commissioner will list his pecuniary interests; and why details of payments and remuneration from the Government of Ireland to the former chief commissioner for foreign assignments and travel have never been registered. [HL12420]

Lord Shutt of Greetland: Maintaining the register of interests is a matter for the commission and the noble Lord may wish to write to it directly.

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Shutt of Greetland on 13 October (*WA 255–6*) concerning the appointment of the Chief Commissioner of the Human Rights Commission in Northern Ireland, whether authority was sought for the appointee to be part-time. [HL12669]

Lord Shutt of Greetland: I refer the noble Lord to my Answer of 12 October (*Official Report*, col. *WA 242*).

Asked by ***Lord Laird***

To ask Her Majesty's Government, further to the Written Answer by Lord Wallace of Saltaire on 3 October (*WA 131–2*), who decided Hilary Jackson was qualified to chair the panel selecting the new chief commissioner of the Northern Ireland Human Rights Commission; and what decision-making process was followed. [HL12699]

Lord Shutt of Greetland: Lord Wallace of Saltaire's Answer of 3 October (*Official Report*, col. *WA 131-2*) makes clear that the Secretary of State approved the panel membership for the chief commissioner appointment process. It is usual practice for a senior official within a department responsible for making public appointments to an arm's-length body to chair the selection panel, in line with OCPA's code of practice.

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will place in the Library of the House all of the correspondence between the Northern Ireland Office and the Northern Ireland Human Rights Commission. [HL12700]

Lord Shutt of Greetland: In recent months, the noble Lord has regularly asked for specific correspondence to be placed in the Library. This has been done except where there were clear reasons against its release.

However, disproportionate cost would be incurred in collating all earlier correspondence and considering it for release.

Nuclear Weapons

Question

Asked by ***Viscount Waverley***

To ask Her Majesty's Government what is their assessment of the contents of the Declaration on a Nuclear-Weapon-Free World moved at the Astana Conference on 12 October 2011. [HL12389]

Lord Wallace of Saltaire: The Government share with Kazakhstan the ultimate objective of a world without nuclear weapons. Our ambassador to Kazakhstan attended the Astana conference on 12 October to show our support for this goal. The Declaration on a Nuclear-Weapon-Free World rightly highlights some of the major achievements over the past 18 months, including the successful 2010 non-proliferation treaty (NPT) review conference. We agree with the declaration's assessment of some of the challenges ahead, not least the need to break the deadlock in the conference on disarmament in order to start negotiations on a fissile material cut-off treaty. The UK looks forward to working with Kazakhstan and our other international partners on the urgent tasks of preventing the spread of nuclear weapons and making further progress on disarmament.

Overseas Aid

Questions

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what is their policy on giving aid to countries where there is systematic persecution of gay persons. [HL12353]

Baroness Northover: The Government brought in new partnership principles in July this year to ensure that the UK now provides aid directly to Governments only when we are satisfied that they share our commitments to:

reduce poverty;

respect human rights and other international obligations;

improve public financial management;
promote good governance and transparency; and
fight corruption.

When we have specific concerns about a Government's failure to protect their citizens' rights, including those of lesbian, gay, bisexual and transgender people, we raise these either directly or in conjunction with international partners at the highest levels of the Government concerned. We may judge that specific human rights concerns are sufficiently serious to merit a suspension of our financial assistance to the Government. If budget support is suspended, we make sure those funds are provided in alternative ways so that the poorest and most marginalised do not suffer as a result.

The Government's policy statement on LGBT rights and equality, *Working for Lesbian, Gay, Bisexual and Transgender Equality*, was published in June 2010 and updated with an action plan in July 2011.

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government whether it is their policy to impose sanctions on, or withdraw aid from, countries where abuse of minorities is permitted, in cases other than those in which the minority consists of gay persons. [HL12354]

Baroness Northover: The Government brought in new partnership principles in July this year to ensure that the UK now provides aid directly to Governments only when we are satisfied that they share our commitments to:

reduce poverty;
respect human rights and other international obligations;
improve public financial management;
promote good governance and transparency; and
fight corruption.

When we have specific concerns about a Government's failure to protect their citizens' rights, including those of minority groups, we raise these either directly or in conjunction with international partners at the highest levels of the Government concerned. We may judge that specific human rights concerns are sufficiently serious to merit a suspension of our financial assistance to the Government. If budget support is suspended, we make sure those funds are provided in alternative ways so that the poorest and most marginalised do not suffer as a result.

We work closely with the Foreign and Commonwealth Office to ensure that UK concerns about the treatment of minority groups are registered at senior levels.

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government whether they will continue to provide aid, both directly and indirectly, to countries that deny basic human rights. [HL12356]

Baroness Northover: The Government brought in new partnership principles in July this year to ensure that the UK now provides aid directly to Governments only when we are satisfied that they share our commitments to:

reduce poverty;
respect human rights and other international obligations;
improve public financial management;
promote good governance and transparency; and
fight corruption.

When we have specific concerns about a Government's failure to protect their citizens' rights, we raise these either directly or in conjunction with international partners at the highest levels of the Government concerned. We may judge that specific human rights concerns are sufficiently serious to merit a suspension of our financial assistance to the government. If budget support is suspended, we make sure those funds are provided in alternative ways so that the poorest and most marginalised do not suffer as a result.

The majority of UK Aid is provided to countries indirectly, through multi-lateral agencies or non-governmental agencies. This provision is essential to lifting millions out of poverty, to preventing unnecessary deaths through disease or inadequate medical treatment, and getting children into school.

Patrick Finucane

Questions

Asked by ***Lord Maginnis of Drumglass***

To ask Her Majesty's Government, further to the statement repeated by Lord Shutt of Greetland on 12 October (*Official Report*, col. 1733–43), whether in using the word "collusion" in relation to murders in Northern Ireland, they had evidence to substantiate a secret agreement or understanding for evil and illegal purposes, as defined in the Oxford English Dictionary; and whether they will, in the future, adhere to that definition in the use of that word in the Northern Ireland context. [HL12508]

Lord Shutt of Greetland: It is clear from the work carried out by Lord Stevens and Judge Cory that, no matter what definition is used, collusion took place in the murder of Patrick Finucane. The Government accept the conclusions of these reports and we do not seek to impose our own definition.

Asked by ***Lord Laird***

To ask Her Majesty's Government how they define the phrase "state collusion", which they accept occurred in the case of the murder of Patrick Finucane; and how that definition differs from those used in the Cory and Stevens reports. [HL12529]

Lord Shutt of Greetland: It is clear from the work carried out by Lord Stevens and Judge Cory that, no matter what definition is used, collusion took place in the murder of Patrick Finucane. The Government accept the conclusions of these reports and we do not seek to impose our own definition.

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will second staff from the Northern Ireland Office to assist Sir Desmond de Silva QC with his report into the death of Patrick Finucane. [HL12591]

Lord Shutt of Greetland: Sir Desmond de Silva QC will be supported by a small team of staff for his work on the Finucane review, which will include staff seconded from the Civil Service. The appointment of this team is a matter for Sir Desmond and the Northern Ireland Office will assist him as required.

Population

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what assessment they have made of the need to control population growth in the United Kingdom in the light of any projections they have made. [HL12459]

Lord Wallace of Saltaire: I refer the noble Lord to the reply given by Lord Taylor of Holbeach on 23 June 2011 (*Official Report*, col. *WA 349*).

Public Sector: Staff

Question

Asked by ***Lord Christopher***

To ask Her Majesty's Government what is the estimated cost-benefit to public funds of the 111,000 fall in the number of state employees in the three quarters up to June 2011. [HL12411]

The Commercial Secretary to the Treasury (Lord Sassoon): The public sector pay bill accounts for around half of departmental resource spending, so deficit reduction will inevitably impact on the public sector workforce. Not tackling the deficit would be the worst thing for jobs in the medium term.

HM Treasury does not centrally manage changes to public sector workforces. It is for individual employers to decide what would be the most cost-effective workforce to enable them to deliver public services and live within their spending review settlements.

Employers have been reforming their workforces since the spending review to make the necessary savings and maximise value for money within their settlements. Different workforces have approached the task in different ways. For example, in the Civil Service, a recruitment freeze has been in place since May 2010.

Railways: Procurement

Questions

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what discussions they have had with Bombardier about the Thameslink contract since the award of that contract. [HL12202]

Earl Attlee: Department for Transport officials met Bombardier to give high level feedback on its tendered bid for the Thameslink rolling stock project contract.

Other discussions between the department and Bombardier have focused on the company's future operations with limited references to the Thameslink contract.

Asked by ***Lord Bradshaw***

To ask Her Majesty's Government when they will confirm the orders for additional Class 350 rail units for London Midland. [HL12563]

Earl Attlee: On the 14 September, London Midland announced the preferred manufacturer and financier that it had selected to provide the additional electric multiple units for its fleet.

At present, commercial negotiations between the parties are ongoing. A full public announcement will be made when a successful conclusion has been reached and the negotiations between London Midland and the Department for Transport have resulted in an overall proposal that is affordable and represents value for money. This is expected to be in early 2012.

Rehabilitation of Offenders Act 1974

Question

Asked by ***Lord Dholakia***

To ask Her Majesty's Government whether they have plans to recommend to the criminal justice agencies the use of Unlock's criminal records disclosure calculator to ensure that offenders are better informed about the Rehabilitation of Offenders Act 1974. [HL12503]

The Minister of State, Ministry of Justice (Lord McNally): The Government welcome the introduction of Unlock's criminal records disclosure calculator, which they see as a helpful tool for individuals to interpret how the Rehabilitation of Offenders Act applies to them, and will recommend it to relevant criminal justice agencies.

Republic of Ireland: Irish Language

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government to what extent they took the principle of equality into account when signing a memorandum of understanding with the Government of the Republic of Ireland about the promotion of the Irish language. [HL12456]

Lord Wallace of Saltaire: On 1 February 2010, the former Government signed a memorandum of understanding with the Irish Government that, among other things, will ensure the widespread availability of the Irish language channel TG4 in Northern Ireland following the digital switchover. The Government see no inconsistency with obligations in respect of equality.

South Sudan

Questions

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

To ask Her Majesty's Government what measures, including funding and technical assistance programmes, the United Kingdom is taking to support the work of South Sudan's Audit Chamber. [HL12296]

Baroness Northover: The UK has provided funding through the Joint Donor Office in Juba to support work to build the capacity of South Sudan's Audit Chamber, specifically to support the development of a legislative framework and build capacity. The UK is now expanding its anti-corruption and accountability programme in South Sudan. In collaboration with other donors and in consultation with the institutions themselves, we will consider how to increase support to accountability institutions in South Sudan.

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

To ask Her Majesty's Government what measures, including funding and technical assistance programmes, the United Kingdom is taking to assist South Sudan in building the capacity of South Sudan's National Legislative Assembly both generally and specifically for oversight of government revenues and expenditures. [HL12297]

Baroness Northover: Through the Joint Donor Office in Juba the UK has provided technical support to the Public Accounts Committee of the South Sudan Legislative Assembly in order to enhance its oversight of Government of South Sudan expenditures. In addition, through its defence transformation programme the UK has provided support to help the Public Security Committee to develop public enquiry mechanisms and enhance oversight of the security sector. This support has included deploying a parliamentary clerk from the UK Houses of Parliament.

St Andrews Agreement

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what steps they have taken towards working with the Northern Ireland Executive as part of the St Andrews agreement to promote Ulster Scots language and culture. [HL12454]

Lord Shutt of Greetland: Most policy responsibility for matters relating to the promotion and protection of Ulster Scots language and culture now resides with the Northern Ireland Executive. The Government retain responsibility for a limited number of policy areas relating to regional, minority and lesser-used languages, and liaise with the relevant Northern Ireland Ministers on matters of mutual interest as appropriate.

Taxation: Fuel Duty

Question

Asked by ***Lord Janner of Braunstone***

To ask Her Majesty's Government whether they plan to cut fuel duty further to assist economic growth. [HL12400]

The Commercial Secretary to the Treasury (Lord Sassoon): The Government's taxation decisions, including on fuel duty, support their objective to achieve strong, sustainable growth. The Chancellor of the Exchequer keeps all taxes under review as part of the Budget process.

Ukraine

Question

Asked by ***Lord Ashcroft***

To ask Her Majesty's Government what assessment they have made of the imprisonment of Yulia Tymoshenko. [HL12403]

Lord Wallace of Saltaire: The UK is deeply concerned at the conviction of Ms Tymoshenko, as my right honourable friend the Foreign Secretary set out in his press statement on 11 October 2011.

Independent, international experts monitoring several Ukrainian court cases, including Ms Tymoshenko's, have found that the judicial process has not been independent, transparent or fair.

The UK supports Ukraine's aspiration eventually to join the EU. If it fails to apply the rule of law objectively and impartially, Ukraine will not qualify for EU membership. The handling of the cases against Ukrainian opposition figures has exposed the extent to which Ukraine is lagging behind EU standards and expectations in the areas of democracy and the rule of law. More immediately, Ms Tymoshenko's sentence could put in jeopardy the signature and ratification of the Association Agreement and Deep and Comprehensive Free Trade Agreement (DCFTA).

We continue to monitor the situation closely and to use every opportunity to urge the Ukrainian authorities to respect EU standards.

UN: Rio+20

Question

Asked by ***Lord Hodgson of Astley Abbotts***

To ask Her Majesty's Government whether they support the emphasis on population stabilisation in the preparations for the Rio+20 United Nations conference on sustainable development. [HL12434]

Baroness Northover: The UK supports the focus of the two themes of the Rio+20 conference; namely, (a) green economy in the context of sustainable development and poverty eradication; and (b) institutional framework for sustainable development. Defra is the Whitehall lead on Rio+20 and we are working closely with it in the development of the UK position.

Western Sahara

Question

Asked by ***Lord Stevens of Kirkwhelpington***

To ask Her Majesty's Government what assessment they have made of proposals for self rule for the people of the Western Sahara. [HL12512]

Lord Wallace of Saltaire: The UK supports the UN Secretary General and his personal envoy, Ambassador Christopher Ross, in their efforts to find a negotiated political settlement, providing for the self-determination of the people of Western Sahara. As set out in Security Council Resolution 1871, we regard the Moroccan Autonomy Plan as a serious and credible contribution to those efforts.

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