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

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House of Lords

Wednesday, 16 October 2013.

3 pm

Prayers—read by the Lord Bishop of Leicester.

Introduction: Lord Whitby

3.08 pm

Michael John Whitby, Esquire, having been created Lord Whitby, of Harborne in the City of Birmingham, was introduced and took the oath, supported by Lord Baker of Dorking and Lord Edmiston, and signed an undertaking to abide by the Code of Conduct.

Alcohol: Late Night Drinking
Question

3.13 pm

Asked by ***Lord Avebury***

To ask Her Majesty's Government what further steps they will take to curb the late night purchasing and consumption of alcohol.

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): My Lords, the Government have given local people greater powers to tackle problem drinking late at night. I am pleased to say that Newcastle is scheduled to be the first area to introduce a late night levy on 1 November. This will make premises selling alcohol late at night contribute to the cost of policing. A number of other areas are also considering banning the sale of alcohol in the early hours of the morning.

Lord Avebury (LD): My Lords, does my noble friend not agree that since only two late night levies—and no early morning restriction orders—have been imposed since they were enacted two years ago, these measures should be more closely targeted on areas and premises that cause the problems, particularly areas of cumulative impact? Secondly, will my noble friend explain how the Government's current licensing proposals are going to reduce or curb the number of licences issued, particularly in areas of cumulative impact, bearing in mind that the number of licences issued has been increasing every year since 2003?

Lord Taylor of Holbeach: My Lords, the cumulative effect of the measures we have introduced enables licensing authorities to target problem premises and areas; for example, we have reduced the evidential threshold, given licensing authorities the power to make representations in their own right, and clarified cumulative impact policies that can apply now to the on and off trade alike.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, a police superintendent has the right to close premises where excessive disorder is being caused. Can the Minister tell the House how often this power has been exercised?

Lord Taylor of Holbeach: I cannot give the noble Lord a quantitative answer. One of the measures under the anti-social behaviour Bill, which will arrive in this House shortly, will give the power—on the authority of a police inspector—to order the immediate closure of premises.

Baroness Meacher (CB): My Lords, the Minister will be aware of the number of alcohol-related accidents that impact on A&E departments every week. Is he aware of the considerable evidence that alcohol is a far more dangerous substance than herbal cannabis which is, of course, an illegal substance in this country today? Does he believe that this is a logical policy?

Lord Taylor of Holbeach: I would not want to venture into a discussion with the noble Baroness, Lady Meacher, on the question of drugs. I believe that we have a debate on this tomorrow. Alcohol is clearly harmful if taken to excess and is responsible for considerable economic damage to the country as well as for health service costs.

Baroness Smith of Basildon (Lab): My Lords, it is worth noting that alcohol consumption dropped by 13% between 2004 and 2010, though it seems to have increased since that time. I cannot imagine why. However, we recognise that problems remain, and more needs to be done to tackle anti-social behaviour connected with the excess drinking of alcohol. I am rather concerned at what the Minister said in response to my noble friend Lord Mackenzie, who has been President of the Police Superintendents Association, about the late-night levy and the actions that police superintendents can take. This has not been a success. Problems still continue. Only one late-night levy is about to be introduced and others have not been. Can the Minister assure me that, when the anti-social behaviour Bill is debated in your Lordships' House, the Government will seriously consider our amendments, rather than reject them, as they did in the Commons?

Lord Taylor of Holbeach: I cannot promise to accept opposition amendments to the Bill, but I am sure that noble Lords will consider all amendments that are tabled. However, I can assure the noble Baroness that this is an important piece of legislation, and I hope she recognises that the measures being introduced by the Government are designed to tackle the anti-social elements that drinking can cause.

Baroness Finlay of Llandaff (CB): My Lords, do the Government recognise that the current below-cost sales of alcohol are responsible for at least 900 major crimes per year? Do they also recognise that the introduction of minimum pricing, on top of banning low-cost sales, would probably cut out 32,000 crimes per year? When are the Government going to revise their policy on minimum pricing and below-cost sales?

Lord Taylor of Holbeach: The noble Baroness will know that the Government have made an announcement on this. Although minimum pricing is always there to be considered, the policy that we are going to introduce is that no drink can be sold at less than the cost of duty plus VAT. I can give some examples. It will mean that a 4% can of lager will have a floor price of 40 pence and a 70 centilitre bottle of vodka will not be able to be sold at below £8.89.

Lord Forsyth of Drumlean (Con): My Lords, does my noble friend not agree that, while dealing with irresponsible drinking, we should not penalise responsible drinkers and those who run responsible premises with policies like minimum alcohol pricing or, indeed, the levy? It means that people who are out celebrating—perhaps the return of good government—end up paying more than they would otherwise because of those who behave badly.

Lord Taylor of Holbeach: My noble friend is perfectly correct to say that the thrust of the Government's policy is to tackle the irresponsible consumption of alcohol and, indeed, our measures are designed to do that. They will create situations in which people feel that, in licensing matters, they too can be involved in the decision-making process.

Lord Hughes of Woodside (Lab): My Lords, since the noble Lord does not have available the information requested by my noble friend Lord Mackenzie of Framwellgate, will he find it out and place a copy in the Library?

Lord Taylor of Holbeach: I will certainly do my best to find the information, but it may not be easy to do so because it is a police matter rather than a Home Office matter. However, I will do all I can to find out if the information is available; I will inform the noble Lord, and I will place a copy in the Library.

Baroness Browning (Con): My Lords, does my noble friend accept that the excessive consumption of alcohol in the late night economy is often carried out by people who actually hold down quite responsible jobs in the daytime? I think that many people would be shocked at that. Will he continue to consider sobriety schemes? They would be a big disincentive to those people, who will have to explain to their employers why they have been required not to attend work because of their excessive alcohol consumption.

Lord Taylor of Holbeach: It certainly has been the case that one of the by-products of excessive alcohol consumption is the cost to the British economy of absenteeism and the like. My noble friend makes a very good point.

EU: Northern Cyprus

Question

3.21 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what assessment they have made of the exclusion of those living in northern Cyprus from the benefits of that island's membership of the European Union.

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi) (Con): My Lords, we endorse the European Council conclusions of 2004 by which the Council undertook to end the isolation of the Turkish Cypriot community, including through much needed assistance programmes. The best way for all Cypriots to enjoy the benefits of EU membership would be through a comprehensive settlement of the Cyprus problem. We continue to support the leaders of both communities in their efforts to achieve this, and we hope that the UN-led negotiations will restart and succeed in the near future.

Lord Sharkey (LD): My noble friend will know that meat and dairy products are the economic mainstay of northern Cyprus, but they are banned from the EU simply because there is no recognised body in northern Cyprus to certify them as safe, although they are safe. Will the Government look at arranging some form of bilateral certification arrangement that would allow such products to be sold in the United Kingdom?

Baroness Warsi: I cannot comment on my noble friend's specific request, although if there is any ongoing work in the area of food, I will certainly write to him. As he will be aware, many of the rights and obligations that came with membership of the EU do not apply to the north of the island, but the EU has been working with representatives from the north to make sure that programmes are put in place for eventual reunification and membership of the EU.

Lord Hannay of Chiswick (CB): My Lords, can the noble Baroness tell us how many Turkish Cypriot citizens are members of the European institutions—the Commission, the Parliament, and so on? If, as I suspect, the answer is zero, does she not agree that it is odd that people who are regarded as citizens of the European Union cannot be recruited to its institutions?

Baroness Warsi: The noble Lord is aware of the ongoing challenges in the area. I presume that he is correct, but if he is not, I am sure that I will write to him with details of how many citizens from the north of the country are members of European Union institutions.

I come back to the basic point in this matter. The way to resolve these issues in the long run is by achieving a settlement. There is some hope for that. As noble Lords will recall, the current president, Nicos Anastasiades, was one of the few politicians who was supportive of the Annan plan during the 2004 referendum. There is therefore some hope that negotiations will resume and will proceed in a positive way.

Baroness Hussein-Ece (LD): My Lords, perhaps I may press my noble friend a little further on this. If, as she says, the United Kingdom as a guarantor power has a legal responsibility to recognise and support the Turkish Cypriot community, why does it appear that the EU border seems to end at the Green Line, so that 300,000 Turkish Cypriots are denied any fundamental rights under the European Union?

Baroness Warsi: My noble friend is a real expert on these issues so I shall not seek to question her assertions, but she will be aware that the European Commission directly implements aid programmes in the north of the country. These social, economic and development programmes are specifically for the Turkish Cypriot community. She will also be aware that if Turkish Cypriots take Republic of Cyprus passports, they can access some of the wider benefits that come with EU membership.

Lord Davies of Coity (Lab): My Lords, does the Minister think there is a measure of inconsistency in, on the one hand, encouraging the Cypriots to reunite while at the same time asking the Scots people perhaps to break up the United Kingdom?

Baroness Warsi: I do not think that this Government are encouraging the Scots not to stay part of the United Kingdom. The noble Lord will be aware that we on this side of the House, and indeed noble Lords on all sides, firmly believe that we are better together.

Identity Cards

Question

3.25 pm

Asked by ***Baroness Miller of Hendon***

To ask Her Majesty's Government what plans they have to introduce self-financing photo identity card cards on a purely voluntary basis to establish citizenship status.

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): My Lords, the Government have no plans to reintroduce identity cards. Identity cards were abolished in 2010 as part of the Government's commitment to restore personal freedoms and curtail unnecessary intrusion by the state.

Baroness Miller of Hendon (Con): I thank the Minister for his reply. I declare an interest in family investment companies which own a few residential properties. Bearing in mind that the forthcoming Immigration Bill will impose major responsibilities on private landlords, the NHS, GPs, banks and even the DVLA to undertake the virtually impossible task of verifying the immigration status of individuals, is it not clear that the existence of some self-funding, authoritative and official identity card, paid for by those who volunteer to acquire it, will be of considerable benefit?

Lord Taylor of Holbeach: I am grateful to my noble friend for her helpful suggestion, but the Government do not believe that a voluntary identity card would help in the Immigration Bill measures. These will be implemented via a range of administrative processes, including through existing documents such as the biometric residence permit and with support from Home Office services.

Lord West of Spithead (Lab): My Lords, does the Minister not agree that, as we move forward using ever more online facilities within government, there will be a need for chip and PIN-type cards for people in this country to ensure their security with all the threats that there are from cyberattacks? People have passports and driving licences. The expression "identity card" is rather pejorative, but we will all end up having to have something because we will otherwise be very vulnerable.

Lord Taylor of Holbeach: The noble Lord is very well briefed as a result of his previous involvement in the Home Office on this subject. He will know that the Home Office takes great interest in this area. The whole question of identity and how we can establish it lies at the core of an awful lot of policies. I accept what the noble Lord says; the work is actively under review. However, we do not believe that an identity card has a part to play in that.

Lord Deben (Con): I wonder whether my noble friend would be kind enough to look at this again, simply because the proposal here is for a voluntary card and it would help people. Could we not draw a line under the political arguments which preceded this and accept that many people would like to have access to such a card and that we should provide it at their cost? Surely there is no skin off anybody's nose for doing so.

Lord Taylor of Holbeach: I assure my noble friend that a sufficient number of documents are already in circulation which will assist identity processes. There is no need to add a further identity card to the list of cards that people have to carry.

Lord Roberts of Llandudno (LD): My Lords, I welcome the Minister's reply on this. Of course it is part of the coalition agreement that we do not introduce ID cards. We have the citizen's card, which is mainly available for retailers to decide on the age of those who want to buy tobacco and so on, but we also have 45 million passport holders and 43 million driving licence holders. Surely this is enough. I was really surprised that this might be linked to the Immigration Bill that is coming before us. I think we must look very warily before we even think in this direction.

Lord Taylor of Holbeach: I can only agree with my noble friend.

Lord Harris of Haringey (Lab): My Lords, surely the point is that the Government opposed the previous identity card on the basis that it was compulsory. The noble Baroness, Lady Miller, is suggesting a voluntary arrangement, one which would cost the Government nothing but would bring great convenience to many people including the carriers of such a card and those who wanted an authoritative proof of identity. Surely this is something that the Government should consider again. The ability to assure one's own identity is increasingly necessary.

Lord Taylor of Holbeach: Noble Lords other than me have already pointed out that there are a large number of documents by which people's identity can be recognised.

Lord Marlesford (Con): My Lords, does my noble friend agree that identity cards are dangerous things because they can be forged but the state does have the right and the need to be able to identify its own citizens? What is needed is at least a unique number. The national insurance number would be an obvious one but you do not get it until you are a certain age; probably the national health number, which you get at birth, would be the sensible one. Would he consider the possibility of amalgamating those two numbers to a number given at birth which could then link citizens to the state?

Lord Taylor of Holbeach: I am sure within your Lordships' House there are plenty of people who can recite their national service number. I am not entirely sure that I agree with my noble friend on this. However, the Government are well aware of the importance of being able to satisfy identities in the modern age. The noble Lord, Lord West, referred to the modern age in his question. The Home Office is well aware of this and is looking at ways in which this can be done.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, the uniqueness of the previous identity card is surely the fact that it was biometric, which identified the person who was attached to the identity card very clearly without any doubt at all. In this case it is suggested that it should be voluntary. What is wrong with this idea?

Lord Taylor of Holbeach: My Lords, I have answered that question but I can reinforce the view that biometrics are important, and that is why the residence permit is biometric.

Lord Cormack (Con): My Lords, although I do not always agree with my noble friend Lord Deben, his logic this afternoon was impeccable, as was that of my noble friend Lady Miller, who asked this Question. This is a voluntary scheme and—in an age when identity theft is becoming an ever increasing problem—why cannot the Government accept a scheme that is both voluntary and costs the public purse nothing?

Lord Taylor of Holbeach: I think the noble Lord weakens his argument by that last phrase. It would cost the Government money. It could not be set up in a way whereby the issuing of such cards could be done outside the authority of the state. Given that the authority of the state requires the Government to police the issuing of these cards, then—voluntary or not—there would be an expense to the Exchequer.

Lord Brooke of Alverthorpe (Lab): Does the Minister not agree that it is ludicrous to believe that the people who create difficulties with security, problems with immigration, difficulties with claiming benefits in certain areas, and who abuse the NHS and claim benefits from it when they should not are the kind of people who—on a voluntary basis—are going to take out an identity card? As the Government present different pieces of legislation to us where they are trying to track people, does the Minister not see increasingly that they made a major mistake in abolishing the previous Government's policy of introducing a compulsory card? Does he not see that in due course they will have to return to this and will have to do it? Would he not reflect on the silliness of the position they now find themselves in?

Lord Taylor of Holbeach: I do not consider that the Government's position is silly. The noble Lord himself says that the problem with the voluntary scheme is that people would not take it up if they had something to hide. That is quite clear. All I can say to him is that I am quite content with the Government's position and content to defend it at this Dispatch Box, because it has saved the Government and the country as a whole a considerable amount of money for what would have been very dubious benefits.

Baroness Symons of Vernham Dean (Lab): My Lords, in that case, will the noble Lord reconsider his answer to the noble Lord, Lord Cormack? He said that he could not agree with him because there would be a charge on the Exchequer. Passports are already paid for by individuals on a basis that covers the costs. So are visas. If we can cover the costs for passports and visas, why could we not do it for an identity card? Will the Minister please reflect on the answer that he gave to the noble Lord, Lord Cormack?

Lord Taylor of Holbeach: I can reflect on it and I certainly promise to do so, but the noble Baroness referred to the passport, which is a perfectly good, valid document. It is very useful and an awful lot of people possess it.

Northern Ireland: Abortion

Question

3.36 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what action they will take in the wake of reports last week on BBC Northern Ireland concerning access to terminations for women in Northern Ireland who are carrying foetuses with severe abnormalities and wish to end their pregnancy.

The Parliamentary Under-Secretary of State, Wales Office (Baroness Randerson) (LD): My Lords, the Abortion Act 1967 does not extend to Northern Ireland, where abortion law is governed by the Offences Against the Person Act 1861. Constitutionally, abortion law in Northern Ireland is a transferred matter. It is therefore the responsibility of Northern Ireland Executive Ministers and so not a matter where Her Majesty's Government have any powers to intervene.

Baroness Thornton (Lab): I was hoping to have a slightly more hopeful Answer from the noble Baroness, but I thank her for what she said. I hope that she will join me in congratulating the Mary Stopes clinic,

which, tomorrow, is marking the first anniversary of its operation in Belfast. I had hoped that she might refer to the review that is taking place about the issue. That review is welcome, but, until it is completed, would it not be fair for Northern Ireland women who need and want terminations under these very unhappy circumstances to have them provided free under the NHS elsewhere in the UK, where that provision is not illegal? Would the noble Baroness care to reflect on the issue raised about how women in one part of the UK are denied rights and access to terminations that are available to all other women in the UK? I recognise that devolution is devolution, but surely it was not intended to achieve this unsatisfactory outcome for women in Northern Ireland.

Baroness Randerson: The noble Baroness will be aware that this case raises some very difficult issues and is very distressing. However, the current difference in legislation means that women travelling to England for an abortion generally make their own arrangements and fund the procedure themselves. To make exceptions to that would be a major departure from the system of residence-based responsibility and the separation of powers between the health services in the four jurisdictions of the UK. The noble Baroness will recognise that this is a sensitive issue that the previous Labour Government, when they were putting in place the devolution settlement, believed should be left to the people of Northern Ireland to decide for themselves.

Baroness Gould of Potternewton (Lab): My Lords, I am a little surprised by the Minister's first reply and I would be grateful for clarification. In 2011, the Government supported a report from the Irish Family Planning Association to the CEDAW periodic review saying that there should be a revision of abortion law in Northern Ireland. I fail to understand why the Government did that if the Minister is right in her argument. I add that this year, again, CEDAW has told the British Government that they need to expedite an amendment to the anti-abortion law in Northern Ireland and create a law to ensure that legal abortion covers circumstances such as threats to a woman's health and cases of serious malformation of the foetus. As a signatory to CEDAW, when are the Government going to honour their commitments?

Baroness Randerson: I think it is important that the UK Government observe the devolution settlement. However, I think it is also important, as the noble Baroness mentioned, that there is consideration of the situation in Northern Ireland. I draw the attention of noble Lords to the comments of David Ford, Justice Minister in the Northern Ireland Executive, who has made it very clear that this issue needs to be reconsidered. Indeed, the Health Minister in Northern Ireland has made similar comments about the current legislation and its applicability in this case. However, it is not an issue for the UK Government.

Lord Steel of Aikwood (LD): Is my noble friend aware that some 14 years ago, when we were legislating on setting up the devolved Administrations in Scotland and Wales, there was serious debate in both Houses about where responsibility for administering the law on abortion should lie? The decision was taken—in my view, quite rightly—that the law should be uniform throughout the UK, so why should we leave Northern Ireland with an 1861 piece of legislation?

Baroness Randerson: The noble Lord is, of course, very much more aware of the background to this situation than I am. However, the current situation is as the previous Government intended it to be—abortion law in Northern Ireland is left to the Northern Ireland Assembly. It would not be acceptable—I am sure that it would not be acceptable to the people of Northern Ireland—for us to seek to change that unilaterally. I also draw the attention of noble Lords to the fact that when the Northern Ireland Assembly discussed new guidelines on abortion in 2007 they were unanimously rejected by Assembly Members.

Baroness O'Loan (CB): My Lords, I thank the Minister for her comments on the fact that abortion is a reserved matter for Northern Ireland and should continue so to be. Is she aware that abortions do occur in Northern Ireland and that there is an ongoing legal duty to recognise that the unborn child, whatever its state of health, is deserving of protection? Is it not the case that England and Wales now needs to reconsider the law on abortion, given that we have a situation in which it is lawful to terminate the life of a baby simply because that baby is a little girl?

Baroness Randerson: On the first point, it is, of course, very much an issue for the people of Northern Ireland. It is a devolved matter and I believe that there is no wish in Northern Ireland for that to change. I would, however, make it absolutely clear to the noble Baroness that it is very certainly not legal to terminate a pregnancy on the grounds of the sex of the child. An investigation into a recent case made that absolutely clear and the Chief Medical Officer will be issuing additional guidance to doctors in the very near future to make sure that that is perfectly clear to all those involved.

Anti-social Behaviour, Crime and Policing Bill

First Reading

3.44 pm

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

Examiner of Petitions for Private Bills

Motion to Appoint

3.45 pm

Moved by ***The Chairman of Committees***

That, pursuant to Private Business Standing Order 69, Mr M D Hamlyn be appointed an Examiner of Petitions for Private Bills in place of Mr S J Patrick.

Motion agreed.

Business of the House

Announcement

3.45 pm

Lord Hunt of Kings Heath (Lab): My Lords, before we move on to Report, I would like to raise a point arising from an amendment to the Care Bill that the Government laid late last night—indeed, some might say "sneaked out 10 minutes before the start of the England-Poland game". This matter will come to be decided by your Lordships on the last day of Report on Monday night.

Amendment 168A is not a technical or insubstantial amendment; it relates to the powers of special administrators in dealing with NHS trusts that are considered to have failed. It follows what happened in south London. Following the appointment of special administrators, proposals were made to downgrade Lewisham Hospital's accident and emergency department, even though Lewisham is a well run and much supported hospital. This hospital was completely outside the remit of the special administrators. This led to court proceedings where the Government had to back off in relation to the changes to Lewisham Hospital.

This amendment would essentially permit what the Government wanted to happen with Lewisham Hospital, but which was stopped, to be able to happen in future. Whether or not the Government are right or wrong, this is a very important subject. It deserves full scrutiny in your Lordships' House, not to be taken as last business on the last day of Report when the House has had no other opportunity of discussing this important matter. I ask the noble Earl, Lord Howe, to agree that this amendment be recommitted to a Committee of the House in order that it can receive full and appropriate scrutiny.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): My Lords, I do not propose to debate this amendment now, but I will refer the noble Lord's request through the usual channels.

Care Bill [HL]

Report (3rd Day)

3.47 pm

Amendment 83

Moved by ***Lord Low of Dalston***

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

"Human Rights Act 1998: provision of "care and support services" to be public function

(1) A person ("P") who provides regulated "social care" is to be taken for the purposes of subsection (3)(b) of section 6 of the Human Rights Act 1998 (acts of public authorities) to be exercising a function of a public nature in doing so.

(2) This section applies to persons providing services regulated by the Care Quality Commission.

(3) In this section "social care" has the same meaning as in the Health and Social Care Act 2008."

Lord Low of Dalston (CB): My Lords, I shall speak also to Amendments 138A and 138B, which are in my name in this group. I shall get those amendments out of the way first, as the debate is likely to focus principally on Amendment 83. Clause 75(6) says that anything done or not done by a third party authorised to carry out a particular function is treated as done or not done by the local authority. In effect, the local authority is solely responsible for the third party's acts or omissions, subject to a couple of exceptions in subsection (7).

The Joint Committee on the draft Care and Support Bill recommended an amendment to make clear that a person with delegated authority is subject to the same legal obligations as a local authority itself. This reflected concerns that there should be a clear chain of accountability by which the individual could hold the third party, not just the local authority, responsible if their rights were infringed. The Government have contended that the clause already provides for continued accountability. They said that the local authority,

"will remain liable for the proper discharge of that function".

This misconstrues what the Joint Committee was recommending. The Government are viewing accountability solely in terms of the relationship between the third party and the local authority. Subsection (6) precludes the possibility of the individual seeking redress from the third party, so it does not accord with the Joint Committee's recommendation. The Minister in Committee said that care providers with delegated functions must carry them out in a way that complies with the Human Rights Act 1998 and that any failure to do so will be a failure by the local authority. That is not the same as the third party being subject to the Human Rights Act; the third party would be failing its obligations to the local authority, but to no one else. The Minister effectively conceded as much when she said:

"By that device, the Human Rights Act would end up having an effect on what those third parties could do, even if they were not themselves directly responsible".—[*Official Report*, 29/7/13; col. 1587.]

The noble Earl, in his letter to Peers following Committee stage, confirmed that individuals will have recourse only to third-party dispute resolution procedures or the local authority's complaints process.

Without these amendments the individual will have no remedy against, for example, a private care home delivering poor service, or a private company failing to carry out proper assessments. We therefore need these amendments to give effect to the Joint Committee's recommendation that a person with delegated authority should be subject to the same legal obligations as the local authority.

On Amendment 83, I set out the arguments in detail in Committee and shall not repeat them at length here. The matter is really quite simple and straightforward and can be stated briefly. The Human Rights Act 1998 applies to all public authorities and to other bodies when they are performing functions of a public nature. That means that it should apply to all providers of care, given that the provision of care is a public function. However, the matter was thrown into doubt in 2007 by the case of YL v Birmingham City Council, which held that care home services provided by private and third sector organisations under a

contract with the local authority did not come under the definition of "public function" for the purposes of the Human Rights Act. This meant that thousands of service users had no direct remedy against their care provider for abuse, neglect or undignified treatment. Though the public body commissioning the care remained bound by the Human Rights Act, that was of little practical value to the individual on the receiving end of poor or abusive treatment, or the person given four weeks' notice to leave because they had antagonised their provider, about whom the noble Lord, Lord Warner, told us in Committee.

Accordingly, Section 145 was introduced into the Health and Social Care Act 2008 to clarify that residential care services provided or arranged by local authorities are covered by the Human Rights Act. There has been concern that this Bill would undo Section 145 by repealing Sections 21A and 26 of the National Assistance Act 1948, under which persons were placed in residential care and through which Section 145 has operated. However, the noble Baroness, Lady Northover, responding to the debate in Committee, set minds at rest on that when she provided the assurance that,

"there will be a consequential amendment to Section 145 of the Health and Social Care Act 2008 so that there will be no regression in human rights legislation".—[*Official Report*, 22/7/13; col. 1118.]

However, there remains concern that Section 145 does not cover all care service users, or even all residential care service users. It only protects those placed in residential care under the National Assistance Act. That being so, it is anomalous not to treat residential care provided under other legislation and domiciliary care in the same way.

The noble Baroness, Lady Northover, reflecting the position put to the Joint Committee on the draft Care and Support Bill, further stated that the Government's position is that all providers of publicly arranged health and social care services, including those in the private and voluntary sectors,

"should consider themselves to be bound by the duty imposed by section 6 of the Human Rights Act 1998 and not act in a way that is incompatible with a Convention right".

However, there are two things wrong with this. First,

"should consider themselves to be bound",

is not the same as "covered in law". Secondly, the Joint Committee was not convinced. It concluded that, as a result of the decision in the YL case, statutory provision is required to ensure this. As I said in Committee, I have seen a letter in which it is stated that the Government's position is that care providers are covered, and should not just "consider themselves to be bound". However, the House of Lords in YL said that they were not and the Joint Committee was not convinced either. Given such uncertainty, it is surely essential that the matter is put beyond doubt in legislation and Amendment 83 would achieve this by deeming that all those providing social care services regulated by the CQC are exercising a public function for the purposes of Section 6 of the Human Rights Act.

The amendment would also include those who are eligible for care but who, due to means testing, have to arrange and/or pay for their own care—so-called "self funders"—and therefore currently lack the full protection of the Human Rights Act. To date, it has been the case, at least for those who were found to be eligible for care in their own home, that the obligation for the local authority to arrange care regardless of the person's resources provided them with a degree of protection under the Human Rights Act. However, the changes to the system of arranging care to be introduced by the Bill weaken this protection. My amendment follows the approach of the Joint Committee and, if accepted, would provide equal protection to all users of regulated social care regardless of where that care is provided and who is paying for it.

The Government believe, as the Explanatory Notes to the draft Bill make clear, that protection under the Human Rights Act extends to care arranged by a local authority, even if it is self-funded, but the Joint Committee does not accept that this does not require explicit statutory provision. However, regardless of this view, it makes the point that it does not address the situation of self-funders, who arrange their own care and support. The Government, they say, will need to consider whether it is right that, of all adults in need of care, only this group should lack the protection of the Human Rights Act.

Given the manifold ambiguities and uncertainties surrounding this question, surely it is right to take this opportunity of putting the matter beyond doubt, as my amendment would do. What reason can the Government possibly have for resisting it, when all it does is to spell out in words of one syllable in the Bill that to which the Government have no objection—indeed, already believe to be the case—but which is subject to so much doubt in everybody else's mind? I beg to move.

Lord Willis of Knaresborough (LD): My Lords, I support Amendments 138A and 138B, but will not add to the excellent comments of the noble Lord, Lord Low. I speak in particular to Amendment 83.

I apologise to your Lordships for not having made any comments in Committee but, as I have pointed out, I was away from the House on the orders of my wife. In supporting Amendment 83, I acknowledge the excellent supporting brief from the Equality and Human Rights Commission. In particular, I thank my noble friend Lord Lester of Herne Hill, who sadly cannot be here today, for his considerable guidance.

The amendment stems from a failure by successive Governments to heed the recommendations of the Joint Committee on Human Rights and the Joint Committee on the draft Care and Support Bill to legislate to tackle the problem created by the majority decision of the Law Lords in 2007 in the case of YL v Birmingham City Council.

In YL, the issue was whether a care home, such as that run by Southern Cross Healthcare Ltd was performing functions of a public nature for the purposes of the Human Rights Act when providing accommodation and care to a resident such as Mrs YL under arrangements made by Southern Cross with Birmingham City Council under Sections 21 and 26 of the National Assistance Act 1948.

The Law Lords decided by three votes to two—the noble and learned Lord, Lord Bingham, and the noble and learned Baroness, Lady Hale, dissenting—that they were not performing a function of a public nature.

[Lord Willis of Knaresborough]
However, anyone reading the dissenting judgments of the noble and learned Lord and the noble and learned Baroness would understand why the majority ruling appeared contrary to the objective and purpose of the Human Rights Act. The previous Government thought that YL was wrongly decided and I assume that the present Government share that view. It would be useful if the Minister could confirm that that is the Government's position.

The previous Government then sought to resolve the problem by intervening in test litigation to clarify or overturn YL, but that did not prove possible. The JCHR twice recommended remedial action, but the previous Government refused to take such action or to support the efforts of Andrew Dismore MP, as the chair of the JCHR, to do so by means of a Private Member's Bill.

4 pm

Lord Wills (Lab): I am very grateful to the noble Lord for giving way and I hesitate to interrupt him, because I agree with almost everything that he is saying, but on a factual point he is wrong. The previous Government—and I was the responsible Minister—did not disagree. We were trying to find a way of resolving this and we ran out of time. It is not that we disagree with it; we were wholly in agreement with the efforts made by Andrew Dismore. We were simply trying to find a robust way of dealing with that particular problem and we ran out of time.

Lord Willis of Knaresborough: I thank my former honorary opponent for that clarification and I certainly would not wish to contradict him. The reality is that the previous Government did, in fact, try to find a way out of this judgment and to correct it in a way which they thought would be beneficial for the people of England and Wales. Instead, they introduced an amendment to the Health and Social Care Act 2008 to extend human rights protection to those receiving residential care arranged by a public authority. The amendment did not extend, as the noble Lord, Lord Low, rightly said, to home care services, even though they were provided under a similar statutory framework. It is that gap that this amendment is designed to fill. Surely there is precious little difference between a local authority securing care services of an individual in a residential care setting or in someone's own home. That is the kernel of this particular problem.

The Department of Health has explained the Government's position in Written Answers to the JCHR. It said that,

"all providers of publicly arranged health and social care services, including private and voluntary sector providers, should consider themselves to be bound by the duty imposed by section 6 of the Human Rights Act 1998, and not to act in a way which is incompatible with a convention right".—[Official Report, Commons, 17/7/12; col. WA 702.]

We are told that:

"The case law supports a broad application of Section 6(3)(b) and provides that individual factors should be considered in each case. As such YL was a case on the particular facts, and it does not necessarily follow that the reasoning in that case will be applied to other social care settings".

I find that very difficult to understand. Can the Minister explain the department's judgment in that way?

The factual settings in YL in favour of a finding that Southern Cross was indeed performing a function of a public nature could not have been stronger, and yet were rejected by the majority so that legislative intervention became necessary. The department says that all providers should consider themselves bound by a Section 6 duty, but the law is entirely uncertain as it stands whether they are required by law to do so.

The department continues in its letter to JCHR:

"The Government do not therefore consider that an amendment to the Human Rights Act 1998 is necessary."

But Amendment 83 is not seeking to amend the general test in Section 6 of the HRA, but to make it clear that someone who provides regulated social care is to be taken for the purpose of Section 6 (3)(b) to be exercising functions of a public nature in doing so. It is hard to see how it could be otherwise. The department continues by saying that the government position remains that:

"Any amendment to the Human Rights Act in relation to third sector and private providers … risks casting doubt about the interpretation of the Human Rights Act".

However, the uncertainty is created not by this amendment but by the decision in YL, and by the fact that the amendment made by the previous Parliament was too narrow.

The Joint Select Committee on the draft Bill, chaired by Paul Burstow MP, included strong membership from all sides of the House. The committee's report, published on 19 March, considered the Government's arguments with great care at paragraphs 280 to 292, and concluded that the present amendment is absolutely necessary.

I therefore hope that the Minister will have had discussions with his ministerial colleagues and officials and will be able to accept the amendment in the name of the noble Lord, Lord Low, without the need to test the opinion of the House.

Lord Hope of Craighead (CB): My Lords, I will say a few words in support of Amendment 83 in the name of the noble Lord, Lord Low. Before I say anything I will follow the example of the noble Lord, Lord Willis, and apologise for not having taken part in proceedings on this Bill before. As the Minister may know, I have recently returned from a period of disqualification, which has now been lifted on my retirement from the UK Supreme Court, so I am now able to speak, which I was not able to before. I thought I might contribute just a few thoughts to this debate against the background of that experience.

My first point is that Section 6(3)(b) of the Human Rights Act is one of the few provisions in what was an excellently drafted Act which, in my experience, judges have found rather difficult to apply in practice. The reasons for this were explained by the noble and learned Lord, Lord Neuberger, in YL. He made the point that any reasoned decision about the meaning of that phrase,

"functions of a public nature",

risked falling foul of—as he put it—circularity, preconception and arbitrariness. The words are quite imprecise, so one has to search for some kind of policy guidance as an aid to their interpretation. There may be a whole variety of factors in one case taken with

another that have to be brought into account as one tries to reach an answer—and in practice, answers are quite hard to predict.

With great respect to the noble Lord, Lord Willis, it is not helpful to ask at this stage whether YL was wrongly decided; we have to take the decision as we find it. That is how the law works. Of course, it is always open to Parliament to take a different view and judges—and, I am certain, noble Lords in that case—appreciate that entirely, as the noble Lord, Lord Neuberger, did for a reason I will come to in a moment. We have to assume that the judges in the lower courts will follow the decision in YL if other cases come before them, and it may not be all that easy for the Supreme Court—if the issue comes back before it in some future case—to depart from the basic reasoning in YL. I therefore suggest that one has simply to approach these issues on the basis that YL is there, and proceed accordingly.

The solution to the problem which the noble Lord, Lord Neuberger, indicated in his speech, at the very end of quite a long judgment, was that if the legislature considered it appropriate that residents in privately owned care homes should be given convention rights protection against the proprietors, it would be right for the legislature to spell that out in terms and make it clear that the rights should be enjoyed by all such residents. The words "spell it out", which I think the noble Lord, Lord Willis, used, make the point that one has to have something which puts the matter plainly on the record and which gets over the difficulty created by the very broad reach of the subsection in Section 6.

As we have heard—I do not need to go over the ground again myself—an amendment was made to the 2008 Act which did not extend to regulated home care services, so there is a gap. There are, therefore, two questions. First, should the gap be filled? Secondly, which is a question for the Minister, how should that be done?

As far as the first point is concerned, as I understand the progress of events, and my reading has indicated this, there is not really any dispute about this because the Department of Health's position, as explained to the Joint Committee on Human Rights, is that,

"all providers of publicly arranged health and social care services … should consider themselves to be bound by the duty imposed by section 6 … not to act in a way which is incompatible with a convention right".—[Official Report, Commons, 17/7/12; col. WA 702.]

I think it was also suggested that it would not necessarily follow that the decision in YL, which was about a care home, would apply to other social care solutions.

I see a difficulty with that approach. Comments of the kind that were made, that people should consider themselves bound by a convention right, however well intentioned, do not have the force of law. They could not be relied upon, for example, in a court to guide a judge about the meaning of Section 6(3)(b) in the particular context. Therefore, they leave the law in a state of uncertainty because they do not have the force of law, and they have no relevance to a decision that the court would have to take.

If one takes the example of a provider who is faced with a claim from a person who is in need of care and not receiving it or whose rights are being infringed, that provider will probably have to seek legal advice as to what should be done. Legal advice would take the provider back to YL, and we find ourselves once again faced with the gap to which other speakers have drawn attention. It is perfectly true that YL was a decision on its own facts, but I respectfully suggest that the implications of the decision go wider than that. If you read the judgments, there is a distinction between private, profit-making bodies on the one hand and state or government-owned bodies with public functions on the other. One can debate how far private and profit-making bodies may be caught by the section, but that is the area which is creating difficulty.

The fact that that body was regulated, which was the situation in YL, was not determinative. The fact that we are dealing with social care which is regulated is not the answer to the problem. That is where the gap now confronts us. I would respectfully suggest, in support of the amendment of the noble Lord, Lord Low, that the answer is to do as the noble and learned Lord, Lord Neuberger, urged us to do at the end of his judgment and to spell it out in terms that a person who provides regulated social care is to be taken to be exercising a public function.

There is another point. A failure by Parliament to grasp this opportunity now and to make it clear will be noticed. There is a risk that, if that opportunity is not taken by Parliament now, courts may take this as a sign that Parliament is content with the law as it stands and may be understood to be on the basis of YL.

I absolutely appreciate that there is a question for the Minister whether this amendment would have wider implications. From my own experience, and having read the judgment in YL too, I am quite certain that thought passed through the minds of the judges. There is reference, for example, to schools and other institutions; the judges may have considered, "If we make a pronouncement about this, it may affect other circumstances and situations". There is a difference, of course, between a judge making that kind of pronouncement and Parliament's putting forward or putting into a measure a precisely targeted measure which deals with a particular problem. It is the difference between a sledgehammer, I would say, to crack a nut, and a rapier which deals with a particular issue. I do not see that there is any real risk that, by dealing with the matter in the targeted way that the amendment of the noble Lord, Lord Low, seeks to do, it will be taken as a signal in the courts that there is some wider reach in Section 6(3)(b) from that which was being discussed in YL.

It is a difficult issue, but I respectfully suggest that it has to be addressed now and that there is a real risk that, if we do not do it now, it will give rise to real problems later. I warmly support the initiative of the noble Lord, Lord Low.

4.15 pm

Baroness Campbell of Surbiton (CB): My Lords, I will speak briefly in support of Amendment 83. I would have spoken on this in Committee, but unfortunately I was drowning in continuity of care. I feel that we are missing an important aspect in the debate: namely, the provider's voice. I will give noble Lords an example

[Baroness Campbell of Surbiton]
from the Joint Committee on Human Rights. We ran an inquiry into Article 13 of the UN convention on the rights of disabled people. We took evidence from a range of providers, including private sector providers. We heard very good evidence from a private sector provider. When they were questioned about the Human Rights Act, it became evident that there was a great deal of confusion about when their homes were covered and when they were not. They erred towards saying, "No, we don't think we're covered because we haven't been trained in that area".

It became very evident to me that there was a crying need for clarification in this area. I asked a very simple question about what the witness thought that this meant for her private sector homes. She said, "Well, to be honest, we already do it. We allow our residents to go to bed at whatever time they like before 10 pm". I feel that the misunderstanding of how the Human Rights Act covers private sector care homes was illustrated in that one moment. Therefore, the law needs clarifying—and this clarification would be welcomed not only by private sector care home providers.

Lord Mackay of Clashfern (Con): My Lords, my name is on the amendment and, of course, I warmly support it. My noble and learned friend, Lord Hope of Craighead, analysed the situation in full, and in a way that in my view was absolutely correct and worthy of being followed. It is quite something for me to realise that my pupil has returned here as a result of his age, but obviously so far his acumen has been in no way affected.

The department says that people who provide this sort of care should consider themselves bound by the Human Rights Act. Why? Is that a mistake? No. So let us make it correct. Let us make sure that they are bound by the Human Rights Act. We are doing exactly what the noble and learned Lord, Lord Neuberger, suggested: where a particular function is to be regarded as of a public nature, the easiest thing to do is to say that. That is exactly what the amendment of the noble Lord, Lord Low, does.

I do not wish to get into the history of the previous Administration. The noble Lord, Lord Wills, came to the battlefront on that on previous occasions in my hearing. I do not know anything at all about that. However, there are two ways of approaching this. One is to consider amending the Human Rights Act, which I think was happening until the demise of the previous Government put an end to their considerations. The other is what the noble and learned Lord, Lord Neuberger, said: do not trouble with trying to provide a better policy in the Human Rights Act but say when you want it to apply. That is exactly what is required here.

I sincerely hope that the Minister will be able to accept the amendment—or that he will table his own amendment at Third Reading. I also hope that this will not be a matter on which we will have to test the opinion of the House, because we agree on the policy that the Human Rights Act should apply. The only question is whether the law has been properly framed to deal with that—and we can have no higher authority speaking on that matter in this House than a retired member of the Supreme Court.

Lord Warner (Lab): I rise as a member of the Joint Select Committee to strongly support the amendment. I shall not go over the previous legal history, or repeat what I said in Committee, other than to emphasise a particular aspect of the case to which I drew attention then. That case related to an elderly woman in her 90s who was resident in a private care home and was totally self-funded. She had been a resident for some time and had the temerity to air her views on assisted dying, which did not please some of the home's staff. She did not seek anybody's help to commit suicide; she just expressed her views. The home's management gave her four weeks' notice to leave the home as a result. When her son raised the issue of her rights under the Human Rights Act with legal counsel, the opinion he was given was that she lacked protection under that Act because she was not in receipt of a service from a body providing a function of a public nature as her placement was neither publicly provided nor in a publicly funded home.

As a member of the Joint Select Committee I raised this matter when we were looking at the Bill and, after deliberation, the committee was unanimous in recommending that the Bill should be amended to clarify matters. This is what the amendment moved by the noble Lord, Lord Low, does. It covers all users of a regulated social care service. It is clear that there are differences of legal opinion on this matter when particular cases are raised. I consider that as parliamentarians, it is our duty to put the matter beyond doubt and provide self-funders with the legal certainty that other elderly people may have when they are in receipt of either domiciliary or residential care.

One of the most important new points that has been made on this issue since we debated it before was made by the noble and learned Lord, Lord Hope of Craighead, when he said that courts will notice if we do not take this opportunity to amend and clarify this legislation. That means that we cannot—as one of my children would say—faff around any longer on this issue. We have to make a decision; the amendment makes that decision, and we should all support it. Frankly, the Government should stop the legal equivalent of counting how many angels can be put on the head of a pin and accept the legal certainty that the amendment moved by the noble Lord, Lord Low, provides. They should be supporting people who are paying their own way by funding their care, not the reverse. There will be a lot more of them in the future so let us provide that protection now.

Lord Faulks (Con): My Lords, I share, of course, the concern of all noble Lords that we should take all reasonable steps to protect vulnerable people who receive social care in whatever circumstances. I enter this debate for the first time with considerable trepidation, having regard to the great distinction of those, both present and absent, who support this amendment. I have to express some real doubts about it.

As far as I am aware this is the first time an attempt has been made to include, within the scope of the Human Rights Act, what may be a purely private function. Those who receive care may not be overly concerned with whether it is being provided by a public authority, a private provider, or in some hybrid

arrangement. Nevertheless, this amendment is in effect extending the scope of the convention beyond the terms of the Human Rights Act.

It is important to consider what protection would be available anyway, in the absence of this amendment. If a poor standard of care is provided to an individual, it is likely that the provider will be in breach of an express term of any contract or in breach of a term implied by the Supply of Goods and Services Act 1982. There will almost certainly be a claim in tort, probably relying on the tort of negligence. There is, of course, a further safeguard in relation to all providers of publicly arranged care, in that all such providers have a duty imposed by Section 6 of the Human Rights Act, at least following what I would submit was the closing of the YL loophole by Section 145 of the Health and Social Care Act. The CQC, as a regulator and a public authority, is subject to the convention.

However, the amendment would, as I understand it, purport to provide some additional remedy; presumably some award of damages. The noble Lord should be aware of the relatively limited scope of damages awards under the Human Rights Act. As Lord Bingham said in the Greenfield case in 2005,

"the 1998 Act is not a tort statute. Its objects are different and broader. Even in a case where a finding of violation is not judged to afford the applicant just satisfaction, such a finding will be an important part of his remedy and an important vindication of the right he has asserted. Damages need not ordinarily be awarded to encourage high standards of compliance by member states, since they are already bound in international law to perform their duties under the Convention in good faith, although it may be different if there is felt to be a need to encourage compliance by individual officials or classes of official".

The House of Lords also emphasised that the Human Rights Act was not to be regarded as a panacea. Indeed, Lord Bingham went on in Greenfield to say that the purpose of the Act,

"was not to give victims better remedies at home than they could recover in Strasbourg".

However, that would be the position here if this amendment was passed. My conclusion is that the amendment amounts to an illegitimate extension of the Human Rights Act and would not, in reality, provide any significant extra protection for those who, quite understandably, we wish to protect.

The future of the Human Rights Act will have to await the outcome of the next election. However, amending the Act, which is what in effect this will do, would be inappropriate and, I have to say, unnecessary.

Lord Mackay of Clashfern: Before the noble Lord sits down, can he explain what, in his view, the remedy is for the case to which the noble Lord, Lord Warner, referred?

Lord Faulks: I understand that in the case to which the noble Lord referred, there was a private provider. There would therefore be the remedies I referred to earlier in my remarks—the normal remedies that those who receive services through a private arrangement would have. The Human Rights Act of course is concerned entirely with remedies against public authorities. I respectfully suggest that one must not lose sight of the remedies that exist, and have always existed, in relation to breaches or violations of anybody's rights in the circumstances described.

Baroness Finlay of Llandaff (CB): Before the noble Lord sits down, can he just clarify something? Noble Lords will have to forgive me, because we have had some very learned legal arguments here and I speak as a simple clinician. Half of the patients in a place of care run by a private provider may be funded by, and have gone through assessments provided by, the NHS. They would therefore be covered by the Human Rights Act but the other half, who have to fund their own care because some official somewhere said that they did not fall within the bar for continuing care funding, would not be covered. The decision as to whether the cover, at the end of the day, applies or does not apply will be left to whichever person determines the funding bar for that individual, as opposed to our knowing that we have protection for those who are vulnerable across the piece.

Lord Faulks: The noble Baroness refers to protection. With respect, the assumption behind her question is that, whatever the arrangements, those people would lack any protection. The burden of my speech is that they would have protection anyway. There is, of course, a distinction between whether their care is a result of a publicly procured arrangement or a purely private arrangement. In the latter case, as the law is currently, there would not be any involvement of the Human Rights Act. But, with respect, the House should not be under any illusion that there is no remedy or no protection for people in the circumstances where there is a private arrangement.

4.30 pm

Lord Mackay of Clashfern: The noble Lord sat down without answering the question that I asked him, which I am very keen for him to answer. My understanding is that this elderly lady was in a home and she was given full notice to leave; there was no question of any breach of contract or anything of that kind. Therefore, the sorts of remedies to which the noble Lord has referred would not be available, whereas under the Human Rights Act there is at least a very considerable probability that she would have some protection.

Lord Faulks: I am sorry that I did not answer the question adequately for the noble and learned Lord. My response is that actually the Human Rights Act remedies, which I endeavoured to deal with in my remarks, would not of themselves provide the sort of remedy that the noble Lord, Lord Warner, had in mind. As was outlined by Lord Bingham in the Greenfield case, the remedies are in fact very limited, very often amounting to a decision that there has been a violation, rather than the sort of practical remedy that I understand the noble Lord to have in mind. That is my response.

Lord Warner: My Lords, just to clarify matters, if this lady had been covered by the Human Rights Act, the son would have been able to take legal action to try to prevent the home removing her. The mischief that was being committed was the forcible removal of a woman in her 90s from the place that she had lived in for a very long time. What the Human Rights Act—as I understand it; I am not a lawyer—would have provided protection for was the ability of a relative to seek

[LORD WARNER]
protection from the courts that this home, in taking that action, was actually in breach of the Human Rights Act. I do not think that the noble Lord's suggested remedies would have helped in this case or any other like it.

While I am on my feet, I say to the noble Lord that this Act changes the position anyway, because that lady, or a similar person in the future, might well have come up against the cap on her privately funded care and her care would then be paid for by the state, which would be performing a public function—or a function of a public nature—in paying for her care in that private provision. This Act changes the dimension from the past as well.

Lord Hope of Craighead: My Lords, I do not know whether I am permitted to speak again since we are on Report but perhaps I might just say for clarification that in my opinion the analysis by the noble Lord, Lord Warner, of the reach of the Human Rights Act is inaccurate. We have had a number of cases, in both the House of Lords Appellate Committee and the Supreme Court, dealing with the kind of problem where people say that they are losing their home because of steps being taken to remove them from premises that they occupy. It is that reach and the uncertainty that has been drawn attention to, where some people have the protection and some do not, that causes real problems.

Lord Faulks: In response to that, of course the Act provides that a court can give just satisfaction, and the remedy may include something of the sort to which the noble and learned Lord refers. However, if there is, as I think I understand the facts of the case, a violation of ordinary private law principles, the remedy should in those circumstances be available. But I think I have trespassed on the House's patience for long enough.

Lord Skelmersdale (Con): My Lords, this debate seems to have degenerated into a recommittal stage, which the noble Lord on the Front Bench opposite called for at the very beginning of today's proceedings. However, I do not think that he, or I, or probably anybody else, wants to recommit this particular clause which is, after all, a new clause.

Lord Wills: My Lords, I support Amendment 83. I should also apologise to the House for not being present in Committee on this Bill. However, as the noble and learned Lord, Lord Mackay, has already said, I do have form on this particular issue.

This amendment deals with what is a long-standing anomaly in the scope of the Human Rights Act, which was created originally by the YL case. As the noble and learned Lord, Lord Hope, has said, it is not for politicians to determine whether cases are rightly or wrongly decided. It was the considered view of the previous Government—and it remains my own view—that that case produced a result that was not compatible with the original intentions of Parliament in passing the Human Rights Act. With respect to the noble Lord, Lord Faulks, and to all the discussion we have just heard, the intent of the Human Rights Act was not only to provide specific remedies in the sort of case that the noble Lord, Lord Warner, has just described. Among other things, it was also to try to create a new culture in the delivery of public services—a culture of dignity and respect for the individual in relation to the state. It seems to me that this is precisely what this amendment sets out to do. As the noble Lord, Lord Low, said in introducing it, it seeks to extend, and to put beyond all doubt, the fundamental protections of the Human Rights Act to some of the most vulnerable members of our society. I support everything that has been said today in favour of this amendment; there have been very powerful speeches putting forward the argument far better than I can.

As we have heard, this anomaly is something that the previous Government wanted to address. We ran out of time before we could adopt the particular remedy that we thought was appropriate. It is an anomaly that your Lordships have debated before, but without finding a way of making progress. Today we have a real chance to make progress. It is significant that two of the proposers of the amendment—the noble and learned Lord, Lord Mackay, and the noble Lord, Lord Lester—have in the past expressed concerns about previous attempts to deal with this particular issue. The fact that they are supporting this amendment suggests that their concerns have now been satisfied and that they do not feel that there are going to be unwelcome and perverse consequences from dealing with this issue in the way that this amendment proposes. For this reason, and for all the other reasons we have already heard, I hope your Lordships will take this opportunity to put this issue beyond doubt and extend these protections to some of the most vulnerable members of our society.

Lord Hunt of Kings Heath: My Lords, this has been a very important debate and I am sure we are grateful to the noble Lord, Lord Low, for the persuasive way in which he moved his amendment. There was a lack of certainty about the scope of the Human Rights Act, arising from the YL case which decided that a private care home providing residential care services under contract to a local authority was not performing a public function and its residents were therefore excluded from the protection of the Human Rights Act.

The noble Lord, Lord Skelmersdale, was right to remind us that we are on Report, but I wanted to reflect on a point made by the noble Lord, Lord Pannick, in Committee. To an extent, it is an answer to the noble Lord, Lord Faulks. What the noble Lord, Lord Pannick, said is that the vulnerability of the person receiving care and the risk of abuse is the reason why he thought the law should impose duties on the provider under the Human Rights Act. In all those circumstances, it should encourage the maintenance of high standards and provide a direct remedy for the victim in appropriate cases.

In Committee, we heard from the then Minister, the noble Baroness, Lady Northover, who relied on two defences of the Government's position. The first was—as the noble and learned Lord, Lord Hope, has reminded us—that those providers of publicly arranged health and social care services, including those in the private and voluntary sectors, should consider themselves bound by the duty. I am sure that we should all consider ourselves to be bound by many things, but the fact that we consider ourselves to be so does not mean that we are bound by them.

The Government's second defence was that the Care Quality Commission as the regulator is subject to the Human Rights Act and that may give rise to a positive obligation to ensure that individuals are protected from treatment that is contrary to their convention rights. It is a duty that falls on the CQC itself, and I remind the House that we are talking about thousands and thousands of providers of services. I do not think that it is a sufficient defence for people who are caught in a vulnerable situation. The noble Lord, Lord Faulks, expressed doubts about including a private function and he pointed to a number of safeguards that already exist, including Section 6 and the CQC, but the vulnerability of so many of the people who we are concerned about seems to express a need for greater statutory provision.

I also remind noble Lords that many of the people we are talking about will move in and out of private care and public care, and at some point under this legislation will actually be in receipt of public support as well as contributing to the cost of their care. We know that when the cap comes in, people will then be entitled to public support, but that does not cover the hotel costs which are estimated at around £12,000 a year. Many people will be in receipt of public support while also having some form of private contract and top-ups, which we have discussed. It would ensure that people had a relationship both in terms of public support and a personal relationship with their private providers. For all these reasons, the argument put by the noble Lord, Lord Low, is very persuasive indeed.

In Committee, the noble Baroness, Lady Northover, said that she thought that talks would be undertaken. I am not aware of those talks and certainly the Opposition have not been invited to them. I hope that the noble Earl will be able to report on what discussions have taken place. At this point, however, we should note the arguments that have been put and I have great sympathy with the noble Lord, Lord Low.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): My Lords, noble Lords have spoken eloquently in support of these amendments and I appreciate the strength of feeling across the House. This is an important issue that is fundamentally concerned with the safeguarding of vulnerable people. While I always hesitate in the extreme to disagree with so many distinguished noble Lords, including noble and learned Lords, I have to say to the House emphatically that these amendments are neither necessary nor an appropriate way to achieve the objectives that are being sought.

As I said before on this issue, the Human Rights Act is about public functions; in other words, it is legislation that concerns the interface between the individual and the state. This philosophy underpins the European Convention on Human Rights and therefore also the Human Rights Act. The noble and learned Lord, Lord Hope of Craighead, to whom I listened with great attention, referred to the case of YL in response to my noble friend Lord Willis, and he urged that the judgment in that case should be accepted and that we should essentially move on. I respectfully agree with that, but I suggest that the key point in this context is what the previous Government did through the Health and Social Care Act 2008. The Act strengthened the regulatory powers to ensure that the Care Quality Commission can enforce regulatory requirements that are in line with the relevant provisions of the European convention, and this applies to all providers of regulated activity, which includes personal care whether publicly or privately funded.

4.45 pm

I hope that the House listened to my noble friend Lord Faulks. Amendment 83 would represent an unprecedented change to the scope of the Human Rights Act. For the first time, it would capture purely private arrangements, such as a privately arranged social care contract between a private care home and a private individual—an arrangement in which there is no state involvement.

The European Convention on Human Rights and the Human Rights Act, which gives further effect to the convention rights in our domestic law, impose public law obligations that apply separately from, and in addition to, the duties and obligations on the private sector.

However desirable it might appear to be, it is obviously difficult to draw a crisp dividing line as to whether a function is of a public or a private nature. Ultimately, the legislation has to bear the test of time. The courts have acknowledged that there is no single test to determine whether a function is of a public nature and have pointed out that there are "serious dangers" in trying to formulate such a test.

In determining whether a function is a public function for the purposes of Section 6, our courts undertake a factor-based approach which is fact-specific in each case. Consequently, it is neither appropriate nor desirable to introduce amendments bringing specific categories of person within the Human Rights Act which do not reflect the factors that have been applied by our courts.

Difficult as it may be to do so, it is important to take a wider view of how the Human Rights Act applies outside the immediate context of social care and to see whether the amendment would have any unfortunate unintended consequences, such as calling into question whether other groups are covered.

It is clear that the amendment seeks to expand Section 6 of our own domestic Human Rights Act. However, as I have already noted, the Human Rights Act is not free- standing legislation. Its purpose is to give effect in our domestic law to the rights in the European Convention on Human Rights. Arguably, the proposed amendment would mean that, for the first time, we would be legislating for an expansion in scope of the Human Rights Act that included claims that cannot be brought before the European Court of Human Rights.

Lord Wills: I would not want the Minister to pray in aid the previous Government's approach to this. The measures that we took, and which he seems to suggest have sorted out this problem, were in our own minds an interim measure while we tried to work out what any consequences would be not of expanding the scope of the Human Rights Act but of making clear the original intent of Parliament. The Minister suggests that there would be perverse consequences of accepting the amendment. In which areas of public policy does he think those consequences will manifest themselves?

Earl Howe: My Lords, I have just described one of those perverse consequences: that we would purport to be giving rights to people which could not be pursued before the European Court of Human Rights. If I could correct the noble Lord, I was not seeking to suggest that the previous Government had addressed the issue that I have been talking about. They addressed part of the issue in the Health and Social Care Act 2008, but there is another dimension to it, as I have said. The amendment would risk creating an asymmetry, which once again risks creating legal uncertainty and confusion.

What people using services and their families want and need is reassurance that they will be treated with care, compassion, kindness and skill. This amendment would not provide any of those things. People are not, surely, really exercised about which route of redress they have if things go wrong so long as they have one, which they do; what they expect is for things not to go wrong in the first place.

I do not accept the argument that putting this measure into legislation will deter those who abuse or neglect, or galvanise providers into preventing those things. It would not send some kind of message that should not otherwise already be amply clear to all providers of care and support: that poor-quality care is unacceptable.

What I think will make much more of a difference are the stronger measures to improve care that the Government are proposing: the emphasis the CQC is placing on individual experience as opposed to paperwork, the improvements in commissioning and the safe routes for whistleblowers. We are amending the requirements that providers have to meet to enable the CQC to take effective action against providers that do not provide acceptable levels of care. With these things in place, it is my view that when things go wrong we will have a strong and effective mechanism for dealing with the situation. For all these reasons I say to the House that the amendment should be decisively and emphatically rejected.

I now turn to Amendments 138A and 138B, also in the name of the noble Lord, Lord Low. Their effect would be that, where a local authority delegates a function, in addition to the local authority remaining subject to all of its legal obligations in the way the function is discharged, the person authorised under the delegation would also be directly subject to those same obligations. These would include, for example, obligations arising under the Human Rights Act. The amendments are unnecessary because when it delegates its functions, Clause 75(6) is clear that the local authority remains responsible for the way that that function is discharged. The person using care and support will therefore always have a route of redress against the local authority even if the local authority has delegated the discharge of the function to a third party.

Furthermore, these amendments could prove unhelpful because, by making both the local authority and the contractor liable, they could create a lack of clarity about who is ultimately responsible for complying with the local authority's statutory obligations when a function is delegated. We believe strongly that it must remain absolutely clear that the ultimate responsibility lies with the local authority and that it cannot absolve itself of this in any way. This is an important principle of allowing local authorities to delegate their functions and we do not want to cast any doubt on this.

The underlying intent of these amendments is unexceptionable as they are about protecting the rights of people using health and care services. However, I am absolutely and firmly resolved that these amendments will not achieve what we all want, which is that everyone receives safe, dignified and respectful care and that we must prevent abuse in the first place. With that, I can only express the hope that the noble Lord will think again and decide to withdraw Amendment 83.

Lord Warner: Before the noble Earl sits down, can he clarify something from his earlier remarks about the Human Rights Act? I ask with a certain amount of humility but also from the perspective of one of the people who wrote the Labour Party's policy in 1996 on the incorporation of the European Convention on Human Rights into what became the Human Rights Act in this country. When that Act was framed, the definition of a public function, or the nature of a public function, was one which did not to a great extent anticipate the move over the next 10 to 15 years in which public services would actually be undertaken and provided by private and voluntary bodies. It simply did not do that. However, the terminology was wide enough at the time to embrace an organisation like Channel 4, which had a mix of public and private functions. It was incorporated, as I recall, into that legislation on the basis of its partial role in performing public functions.

The noble Earl seems to accept that, over time, case law can change the definition of the nature of a public function. He seems to be saying that we have to plod through the courts, case by case, to change the definition. I rather lost him when he then tried to argue that you cannot do it by groups of cases, which is effectively what this amendment does. Is the noble Earl saying that the definition of the nature of a public function—in the law as it is—cannot be changed by cases and can only be changed by amending the primary legislation itself?

Earl Howe: I think that I covered that point when I said that the courts have ruled that there is no single test to determine whether a function is of a public or a private nature. They have also pointed out that there are serious dangers in trying to formulate such a test, which is what the amendment is trying to do, in its own way. If we go back to the noble Lord's example of the 90 year-old lady in the care home and even if the Human Rights Act were to apply, it is impossible to predict the outcome of an application to a court for—let us say—an injunction to prevent her removal, because each case is fact-specific. It may be found that the lady's human rights were not violated, but it is not possible to predict that in advance. I hope that clarifies the position and answers the noble Lord's question.

Lord Low of Dalston: My Lords, I thank the Minister for his response, although it obviously leaves me a little disappointed. I do not propose to respond on Amendments 138A and 138B, because I do not propose to press them to a Division when we finally reach them. However, I should like to say something in response to what has been said about Amendment 83.

First, I thank all noble Lords who have spoken, especially those who have spoken in support from all quarters of the House. It has been a high-calibre debate which does credit to a House noted for characteristically engaging in debate of a high calibre. This one was, I think, particularly authoritative. Without wishing to be invidious in any way, I particularly give thanks for the exceptionally thoughtful, careful and authoritative analysis to which we were treated by the noble and learned Lord, Lord Hope of Craighead.

I also observe that we were deprived of the analysis of two of my other supporters who attached their names to the amendment, the noble Lords, Lord Pannick and Lord Lester, who were unable to be here. In those who added their names to the amendment, those who have spoken and those who would have spoken had they been here, we could not have had a more authoritative and heavyweight line-up in support of the amendment in this House.

There has been general agreement that the matter should be put beyond doubt. Indeed, as the noble and learned Lord, Lord Hope, pointed out, it would actually be dangerous if we were not to do so. If I understood the noble Earl correctly, he said that we should stick with the position that was arrived at as a result of Section 145 of the Health and Social Care Act. As the noble Lord, Lord Wills, made clear, when he said that noble Lords should not pray in aid the position arrived at by the previous Government, this is unfinished business. No one can pretend that we have reached a final resolution of these matters with Section 145 of the Health and Social Care Act. That is why it is so important that we should take the opportunity presented by the Bill to take the further steps necessary to put the matter beyond doubt.

We have heard what the noble Earl had to say in response to the debate, but I confess that I am baffled. Between Committee and Report, the Government seem to have executed a complete volte face and completely changed their position. The position explained to us in Committee was that the Government did not believe that the amendment was necessary because the matters that it sought to put beyond doubt were already provided for. Today, the noble Earl tells us that he must urge the House to reject the amendment because the matters should not be provided for. The Government need to make up their mind what their position is.

The Minister also made the point that we should not take this step because it would deliver to service users rights over and above those available under the ECHR. I am sorry, but I simply do not understand that point. The amendment simply delivers to service users rights which are available under the Human Rights Act, which is predicated upon the ECHR. Even the noble Lord, Lord Faulks, agrees, I think, that we should put the matter beyond doubt; he just does not think that we should put it beyond doubt in this way or that the Human Rights Act should be extended this far. Having listened to all the debate, I submit that the noble Lord, Lord Faulks, and of course the Minister in adopting his remarks, are on their own in this matter in the House. There is general agreement not only that we should put the matter beyond doubt, but that we should put it beyond doubt in the manner which this amendment secures. Indeed, until today this agreement used to include the Government.

I think we should put the matter to rest, as the Minister has said, decisively and emphatically in the terms this amendment provides for and which the Government, until very recently, supported in substance, so I wish to test the opinion of the House.

5.01 pm

Division on Amendment 83.

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Amendment 83 agreed.

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5.18 pm

Clause 58: Assessment of a child's needs for care and support

Amendment 83A

Moved by ***Lord Patel***

83A: Clause 58, page 47, line 5, at beginning insert "When a child receiving services reaches the age of 14 or"

Lord Patel (CB): My Lords, I shall speak also to the other amendments in my name in this group. I thank the Minister for the government amendments, which go a considerable way towards helping the arrangements for the transition of children to adulthood. My amendments are intended to strengthen that. I thank my noble friend Lady Finlay for putting her name to the amendments.

Amendment 83A is one of a series of amendments which I have tabled with the intention of bringing about better outcomes for young people who need to transition from child to adult palliative care services. These young people are represented by the Transition Taskforce, a partnership of organisations which includes Help the Hospices, the National Council for Palliative Care, Marie Curie Cancer Care and Together for Short Lives. All these organisations support these amendments.

I have spoken previously at other stages of the Bill about the 40,000 children and young people—these are the numbers we are talking about—aged from 0 to 19 in England who live with long-term health conditions, which for most of these children will eventually end their lives and for which they may require palliative care. Medical advances mean, however, that young people with a range of different conditions now live to adulthood—some 10% of the 40,000 children now live beyond 19 years.

Good planned transition, when it works, changes the lives of these young people. Unfortunately, for the majority that is not happening. I will give the example of one young girl, Lucy Watts, who is 20 years-old, and has Ehlers-Danlos syndrome, which means that Lucy has a number of inherited conditions which were diagnosed by the time she was a teenager and is unable to eat normal food. Her system does not digest food and she is fed intravenously all the time. While she is able to sit up for a few hours a day, Lucy spends most of her time in bed. Lucy's mum, who has a full-time job, carries out the majority of her care and all of her day-to-day medical care.

However, Lucy is fortunate, because her transition to adult service was excellent because there was joint working between children's and adult services over the course of a whole year. That is the important point. It takes a long time for transition arrangements to be put in place for these children. Lucy is quite a feisty young lady. She said:

"Transitioning from children's to adult in the medical and social world is a huge step ... The people involved in my care have been very supportive and were brought in before I started the transition".

Lucy's case demonstrates how important it is for young people and families that their transition is planned well in advance of their 18th birthday and why our amendments to stipulate a timeframe for a child's needs assessment are so important.

I very much welcome the fact that the Government have amended the Bill to ensure that when it appears to a local authority that the child or their carer is like to have needs for care and support after the child becomes 18, the local authority must assess them. I appreciate, too, the Government's stated position that the needs of very young people are different and that their care needs can change between the ages of 14 and 18 in a variety of ways. However, our amendments would provide flexibility by ensuring that assessments could be initiated before the age of 14 if requested by the child or parent or if it appears to the local authority that an assessment is necessary and appropriate. Local authorities would have until the age of 16 to assess the child's needs. They would not be prevented from reassessing a young person if their needs changed before they reached 18. They would also enable local authorities a period of two years to assess the child's needs in cases where their care needs become apparent only after the age of 14. Without these important thresholds, it is feasible that a local authority may leave it too late to carry out a child's needs assessment.

Setting the age threshold for a child's needs assessment at 14 is also based on the existing statutory requirement for every young person in year 9—that is, aged 14 to 15—with a statement of special educational needs to have a transition plan. Our amendment would ensure that transition planning correlates with that requirement and reflects best practice in exemplary palliative care services in England. It is entirely reasonable that some young people with life-limiting conditions, including those with conditions such as Duchenne muscular dystrophy and cerebral palsy, could be expected from

[LORD PATEL]
an early stage to live beyond 18. Assessing and planning for their future needs should therefore begin at the age of 14. Our amendments would ensure that this is the case without disadvantaging young people with other disabilities, which is the concern that was expressed. The Bill already stipulates that where a local authority deems a child's assessment not to be in the best interest of the young person or the young person does not consent to being assessed, an assessment will not take place.

Amendment 89B, which is a long amendment, corrects the anomaly of the transition and the duty on local authorities. While the Bill currently makes provisions to enable local authorities to carry out a child's needs assessment, there is no duty on local authorities to use the assessment to create a transition plan for the young person. Amendment 89B would ensure that, if a child's needs assessment finds that a young person is likely to need health or social care when they reach adulthood, a statutory five-year rolling transition plan should be prepared by the time they are 16.

The amendment has a number of other important features. It would ensure that children, parents and carers were involved in the transition planning process and that transition plans are maintained until the young person reaches the age of 25, which 10% of these children would probably reach. Further, one of the provisions included in the Children and Families Bill is to introduce an integrated education, health and care plan—or EHC plan—for young people who have special educational needs. This will include many—but, crucially, not all—young people who need palliative care. Where a young person stays in education or training, they will be eligible for an EHC plan until the age of 25. I recognise that an EHC plan could fulfil the functions which I intend the transition plan in my amendment to fulfil. An optimal position would be for EHC plans to be available to all young disabled people up to the age of 25—but that is not the case. Our amendments will provide similarly joined-up transition provision for young people who need palliative care but do not have SEN.

Amendments 93A, 94A and 94B would amend and address the carer's needs. In considering young people who need to transition from children's to adult services, it is also important that we address the needs of those who care for them. I welcome the Government's aspiration to do so and the amendment that the Government have already tabled to strengthen the Bill. However, as with the clauses relating to planning for young people's needs on transition, we need to go further in order to ensure that planning for carers also happens in a timely fashion. Amendment 93A would introduce an age threshold of 14 at which a local authority would be duty-bound to undertake a child carer's needs assessment.

I hope that I have persuaded the Minister that his amendments, excellent as they are, need a bit more tweaking to make it possible to streamline the process of transition of children to adulthood. My amendments merely help to do that. Some children may of course begin to need long-term health or social care after they are 14. In such cases it may not be reasonable to expect a local authority to complete a child carer's needs assessment before the child reaches the age of 16. I hope that the Minister will be persuaded enough to add to his excellent amendments a few more to fulfil these needs. I look forward to hearing his response.

Baroness Finlay of Llandaff (CB): My Lords, I am most grateful to my noble friend Lord Patel for the way in which he has introduced our amendments. I greatly welcome the Government's amendments in this area of transition. The reason that our amendments are written as they are is because this group of children are different to adults who are terminally ill. They have life-limiting conditions, but their prognosis may be years. However, during that time they know that they will deteriorate, as do their parents. We are therefore looking at completely different timeframes, and with completely unpredictable prognoses, except for the likelihood that they will live through into adulthood. Some of them, of course, live surprisingly long periods of time and may live several decades into adulthood. They tend to have the inherited disorders of metabolism. They are a different cohort from those who have terminal illnesses such as cancer. There are also those children who, for example, have had very severe sudden injuries, such as a severe head injury, and then develop epilepsy, which can then become so severe that it is life threatening. Many of the children also have learning difficulties and educational needs.

5.30 pm

Our amendments, I hope, will create the triangulation that is required between health, education, and social care in the context of this Bill so that many of the young people can carry on having their educational needs provided for. This group of young people often describes leaving paediatric care and entering adult care as "falling off a cliff". They feel that they are going into an enormous chasm. They have been under the care of one service in paediatrics, but there is not a neat fit for adult services with the different specialities. That creates a major difficulty for them. That is why we feel that the assessments have to happen early. It is important for the young person to develop confidence in the assessment process in order to disclose what their needs are and to develop confidence in those doing the assessment.

The other reason that it is important to do it early is for the sake of the parents. These parents are getting older. They know that their lives may not carry on. They may well be outlived by their child. That is an enormous worry to many of them. Often the families have already split apart; many marriages break up with the strain that caring for some of these young people has imposed. The remaining parent really needs to know that the plans are in place and will be maintained. The reason for continuing to 25 is precisely that. Most educational services for these children stop at 21. It is very unusual for them to have anywhere to go after that. They have housing needs and care needs. However much one hopes that they may live independently, not all of them achieve that.

Placing them for care can be very complex. A young person with all the needs of a young person and all the emotional needs and sexual-development needs does not want to be placed in an institution which is full of people over 85, some of whom have got dementia,

where the staff are not comfortable even discussing with them some of their more intimate needs and desires. These young people want to discuss contraception; they want to discuss sexual experience; they may want to drink alcohol. In an older person's environment, that is not always the atmosphere. As the parents get older, they know that the physical strain of providing care is becoming too great, and they will not be able to do it anymore. That is why we feel strongly that the government amendments are fantastic, as far as they go, but having an extension with clear timelines to make sure that this is a gentle process is particularly important. I hope that the Minister might have some words of comfort for us, if it is not to accept the amendment but certainly within regulational guidance later, that this period of transition will be looked at because it is so difficult for both the young people and for their parents or carers.

Baroness Gardner of Parkes (Con): My Lords, I particularly wish to speak on Amendments 83A and 84, but I could just as easily have spoken on any one of these amendments—there is such a big group of them—because the issue that I wish to raise is my concern over this care issue falling down between this Bill and the Children and Families Bill. The timing of these two Bills makes it very difficult unless the Minister, having heard all these debates that everyone will give now, and the comments on these issues, gives us an undertaking that he will liaise with the noble Lord, Lord Nash, and that between them they might try and sort out where it is going to go. This is what worries me: that it will end up going nowhere or come up from the noble Lord, Lord Nash, in a form that will make it too late to bring back here, unless the Minister says that he will look at everything said today and bring back an amendment—or at least accept an amendment if we could all agree on one.

So much of what has been said made sense. The comments of the noble Baroness, Lady Finlay, were fascinating, and the noble Lord, Lord Patel, put it all very clearly. The noble Baroness spoke more on issues about which I am particularly concerned. My eldest grandson is a Down's child. His Down's is fairly severe. He has been fortunate in having wonderful care at a Mencap home. He is 22 and this is his last year of receiving full support. He was very happy at the home for some years, until a glitch appeared in the past year. In his unit, a number of residents are put together to live a normal life and to learn how to go out and live in society. Unfortunately, a very aggressive boy was put into the group. No one knew that he was aggressive. He attacked the staff quite violently. As a result, others—I do not know whether it was just my grandson, or whether it was others as well—copied him. This is a terrible risk. If we do not supervise people and have continuing care and assessment of them, how do we know that they will not meet a violent person who behaves in this way, either deliberately or for some other reason—for example, because they are violent and cannot help trying to impose violence on everyone else? It is a real worry not only for the person but for society and the community.

The noble Baroness, Lady Finlay, spoke about the parents who care so much. The parents of this boy are both very clever doctors. One of his siblings is just starting medicine and the other hopes to in the next year or so. So he has siblings who would be able to care if his parents die before him. However, people with Down's syndrome can live to a considerable age. I have met people of 50 and 60 who have the syndrome. In many cases, their parents will not be alive. It is a huge responsibility to pass on to siblings. Therefore, it is important that, as far as possible, these people should be brought into society to live as normally as they can. As they grow older, they usually grow bigger and stronger. Therefore, they are more of a worry to themselves and to other people. It is terribly important that the assessment of cases for continuing care should be made, and should continue to be made—and not just at 25. If people are going to live to 50, they may need support until then.

A number of the amendments put down by the noble Earl, Lord Howe, cover that issue, but without defining it clearly. This is why I am speaking in general on the amendments in this group. It is important that this should be clear. I have added my name to an amendment of the noble Lord, Lord Rix, in the Children and Families Bill. It is in response to the implication that the Government are thinking of taking out care completely: that once education finishes, nothing more will follow. That is why it is so important to be assured in this Bill that something else will follow.

My daughter tells me—and she has sent me a letter from another parent—that there is great concern that parents are not listened to nearly as much as other people are. The noble Earl's Amendment 84 does not really cover anyone except a remote person in a local authority who will be responsible for needs. There is nothing to say that they will consult, or even consider the views of, parents or the person who is doing most of the caring for the person concerned. None of the amendments in this group quite reaches what is necessary to cover the issue. I hope that when the Minister sums up, he will give an assurance that will leave the way open for this to be considered at Third Reading. The rules on what can be brought back at Third Reading are very specific. If today we all ended up either winning or losing on some particular thing, it would not necessarily mean that we could modify it in a way that we all thought was better and brought a better answer. I support Amendment 83A and probably quite a number of others, but I will not go into the details because my argument applies both for and against so many of these amendments and I do not want to waste the House's time by speaking more than once.

Earl Howe: My Lords, I am pleased that I have been able to table amendments that significantly strengthen these important provisions, and I am grateful to noble Lords for acknowledging that. Currently, assessment under the transition provisions has to be requested and I sympathise with the concern that in some instances, people who are unaware that they can request an assessment may lose out.

Amendments 84, 87, 89, 92, 94, 96, 98, 102, 103, 106, 108 and 113 remove the need to request the assessment. I have also tabled Amendments 85, 95, 99 and 104. They will replace provision that local authorities may assess a child, a child's carer or a young carer when it

[Earl Howe]
appears to them that it will be of significant benefit to the individual to assess and where they are likely to have needs once they turn 18, with a duty that a local authority must assess in these circumstances.

Amendments 110 and 111 reflect an amendment to the young carer's amendment to the Children and Families Bill. This is an example of the detailed work undertaken to ensure that the two Bills work together. I want to reassure my noble friend Lady Gardner in that context that we have done a great deal of work over the summer to make sure that that is indeed the case. Amendments 83A, 84A, 89A, 93A, 94A and 94B, tabled by the noble Lord, Lord Patel, and the noble Baroness, Lady Finlay, reflect concern that a local authority may leave it too late to carry out an assessment. I need to be very clear about this. The amendments I have tabled place a duty on local authorities that they must assess at the time where it appears to them that there is likely to be a need when the young person turns 18, and it is of significant benefit to that individual to assess at that time. My noble friend Lady Gardner was worried that the government amendments might not be sufficiently precise or prescriptive. The clauses are formulated in this way precisely so that assessments happen at the right time, whether that is before or after the age of 14, depending on the individual. The Bill approaches transition planning with a firm focus on assessing at the right time for the individual by the new duty to assess where it would be of significant benefit to the individual. I am not persuaded that the interests of young people are best served by prescribing when assessment should take place.

Lord Hunt of Kings Heath: I understand what the noble Earl is saying: it is difficult to prescribe in legislation. However, does he take the point that experience suggests that in the main assessments do not take place early enough, so when the young person is a little older it is often too late to put in the necessary arrangements? Behind the stricture of saying that it should be done at that age lies a real concern about how it works out in practice.

Earl Howe: My Lords, I accept that that is a problem in many cases and it needs to be addressed. It should be addressed satisfactorily by the government amendments in combination with guidance, which I am about to refer to.

To prescribe the age thresholds proposed would run the risk of failing young people and their families by creating a system that is run according to the age of an individual, rather than according to what is best for the individual at a given time in their life. I remain absolutely committed to ensuring that the question of when to assess a child, carer or parent carer is further addressed in guidance. This will do justice to the broad range of needs and circumstances of young people and their families at the point of transition. Guidance will be developed with the involvement of stakeholders.

5.45 pm

I turn to Amendment 89B, which concerns a number of elements of transition planning. In response to proposed new subsection (8), I simply say that provision that the plan must run until the age of 25 is not appropriate because it does not take account of whether this is appropriate for each individual and would create a blanket rule irrespective of the individual's needs and wishes. We agree that information and planning are crucial. They form the cornerstone of these provisions. Clauses 59, 61 and 64 already provide that the information provided will include an indication of whether they are likely to be eligible, and advice and information about what can be done to meet any needs and about what can be done to prevent or delay the development of needs.

The noble Lord and the noble Baroness seek additional detail in the Bill. The clauses, as drafted, are focused on the outcomes that the individual wants to achieve. I will address some of the particular concerns in turn. First, I can give a commitment, as I confirmed in Committee, that outcomes may include employment, education or housing. Further, the Bill already specifies that the individual must be involved in the assessment. However, details about the name of the document arising out of this assessment, what its contents should be and the practicalities of its preparation should not be prescribed in the Bill but will be addressed in guidance. Statutory guidance will provide clear direction to local authorities about how we expect them to exercise this function.

The noble Lord and the noble Baroness are concerned about co-operation between agencies and about the link to education, health and care plans. My noble friend Lady Gardner also expressed concern around this. The Bill and the Children and Families Bill include provision that assessment can be joint, including for joined-up assessments in relation to an education, health and care plan. Practical questions about how to achieve a joined-up approach will be addressed by the guidance supporting the Care Bill, informed by learning from the pathfinders that have been exploring how best to streamline the assessment process, putting families and young people at the centre.

I reiterate that where a young person over the age of 18 has an EHC plan and, as such, the "care" part of that plan is provided under this Bill, we expect co-operation between adult and children's services in relation to any review of the plan. Co-operation with the preparation, maintenance and review of the EHC plan, as provided for by the Children and Families Bill in respect of children, would be required by Clause 6(3), which sets a clear duty on the local authority in this respect, and by Clause 6(5)(c), which underlines that this duty relates to transition cases. Guidance can be used to ensure that this is clear.

I add that requiring a local authority to make arrangements to secure provision for children and young people with a transition plan is not appropriate or necessary. Services to children cannot, and should not, be provided under this Bill—children's legislation provides for this. Services to young people over the age of 18 would be provided, if necessary, under provisions earlier in Part 1.

I am keen to respond to my noble friend Lady Gardner, who asked me whether the local authority has to consider the parent carer in the kind of situation that she outlined. Yes—Clauses 60 and 61 provide the

duty to assess this group of people in a similar manner to young people with needs and young carers. I have a note setting out the clear links between this Bill and the Children and Families Bill. If it would help my noble friend, I would be happy to send it to her. However, it is rather lengthy and I hope that she will forgive me if I do not read them all out.

I trust that I have provided some reassurance on these issues and that the noble Lord will feel able to withdraw his amendment.

Lord Patel: I am grateful to the Minister for his comments. If I had known before I started speaking that he was going to produce the guidance to cover all these issues, I might have said that I would not move this amendment. But having heard him say that there will be guidance in statute to cover all these issues, I am extremely grateful. I thank the other noble Lords and noble Baronesses who spoke. I thought for a minute that the Opposition were going to remain silent on this amendment but I am glad that the noble Lord, Lord Hunt of Kings Heath, felt obliged to intervene, and I am grateful to him for that. I withdraw the amendment.

Amendment 83A withdrawn.

Amendment 84

Moved by ***Earl Howe***

84: Clause 58, page 47, line 5, leave out from "Where" to "after" in line 7 and insert "it appears to a local authority that a child is likely to have needs for care and support"

Amendment 84 agreed.

Amendment 84A not moved.

Amendments 85 to 89

Moved by ***Earl Howe***

85: Clause 58, page 47, line 8, leave out "may" and insert "must"

86: Clause 58, page 47, line 16, leave out subsection (3)

87: Clause 58, page 47, line 19, leave out from beginning to "the" in line 20

88: Clause 58, page 47, line 25, at end insert—

"( ) Where a child refuses a child's needs assessment and the consent condition is accordingly not met, the local authority must nonetheless carry out the assessment if the child is experiencing, or is at risk of, abuse or neglect."

89: Clause 58, page 47, line 26, leave out from beginning to "must" and insert "Where a local authority, having received a request to carry out a child's assessment from the child concerned or a parent or carer of the child, decides not to comply with the request, it"

Amendments 85 to 89 agreed.

Amendment 89A not moved.

Amendment 89B not moved.

Clause 59: Child's needs assessment: requirements etc.

Amendments 90 to 93

Moved by ***Earl Howe***

90: Clause 59, page 48, line 6, leave out paragraph (d)

91: Clause 59, page 48, line 14, at end insert—

"( ) When carrying out a child's needs assessment, a local authority must also consider whether, and if so to what extent, matters other than the provision of care and support could contribute to the achievement of the outcomes that the child wishes to achieve in day-to-day life."

92: Clause 59, page 48, leave out line 16 and insert "child"

93: Clause 59, page 48, line 24, at end insert—

"( ) But in a case where the child is not competent or lacks capacity to understand the things which the local authority is required to give under subsection (3), that subsection is to have effect as if for "must give the child" there were substituted "must give the child's parents"."

Amendments 90 to 93 agreed.

Clause 60: Assessment of a child's carer's needs for support

Amendment 93A not moved.

Amendment 94

Moved by ***Earl Howe***

94: Clause 60, page 48, line 38, leave out from "Where" to "after" in line 40 and insert "it appears to a local authority that a carer of a child is likely to have needs for support"

Amendment 94 agreed.

Amendments 94A and 94B not moved.

Amendments 95 to 99

Moved by ***Earl Howe***

95: Clause 60, page 49, line 1, leave out subsection (2)

96: Clause 60, page 49, line 10, leave out "or (2)"

97: Clause 60, page 49, line 11, at end insert—

"(3A) Where a child's carer refuses a child's carer's assessment, the local authority is not required to carry out the assessment (and subsection (1) does not apply in the carer's case).

(3B) Where, having refused a child's carer's assessment, a child's carer requests the assessment, subsection (1) applies in the carer's case (and subsection (3A) does not).

(3C) Where a child's carer has refused a child's carer's assessment and the local authority concerned thinks that the carer's needs or circumstances have changed, subsection (1) applies in the carer's case (but subject to further refusal as mentioned in subsection (3A)."

98: Clause 60, page 49, leave out lines 12 and 13 and insert "Where a local authority, having received a request to carry out a child's carer's assessment from the carer concerned, decides not to comply with the request, it must give the carer—"

99: Clause 60, page 49, line 17, leave out subsection (5)

Amendments 95 to 99 agreed.

Clause 61: Child's carer's assessment: requirements etc.

Amendments 100 to 102

Moved by ***Earl Howe***

100: Clause 61, page 50, line 10, leave out paragraph (f)

101: Clause 61, page 50, line 21, at end insert—

"( ) When carrying out a child's carer's assessment, a local authority must also consider whether, and if so to what extent, matters other than the provision of support could contribute to the achievement of the outcomes that the carer wishes to achieve in day-to-day life."

102: Clause 61, page 50, leave out line 23 and insert "carer"

Amendments 100 to 102 agreed.

Clause 63: Assessment of a young carer's needs for support

Amendments 103 to 108

Moved by ***Earl Howe***

103: Clause 63, page 50, line 44, leave out from "Where" to "after" in line 1 on page 51 and insert "it appears to a local authority that a young carer is likely to have needs for support"

104: Clause 63, page 51, line 2, leave out "may" and insert "must"

105: Clause 63, page 51, line 10, leave out subsection (3)

106: Clause 63, page 51, leave out line 13

107: Clause 63, page 51, line 20, at end insert—

"( ) Where a young carer refuses a young carer's assessment and the consent condition is accordingly not met, the local authority must nonetheless carry out the assessment if the young carer is experiencing, or is at risk of, abuse or neglect."

108: Clause 63, page 51, line 21, leave out from beginning to "must" and insert "Where a local authority, having received a request to carry out a young carer's assessment from the young carer concerned or a parent of the young carer, decides not to comply with the request, it"

Amendments 103 to 108 agreed.

Clause 64: Young carer's assessment: requirements etc.

Amendments 109 to 114

Moved by ***Earl Howe***

109: Clause 64, page 52, line 7, leave out paragraph (f)

110: Clause 64, page 52, line 14, leave out "whether" and insert "the extent to which"

111: Clause 64, page 52, line 16, leave out "whether" and insert "the extent to which"

112: Clause 64, page 52, line 23, at end insert—

"( ) When carrying out a young carer's assessment, a local authority must also consider whether, and if so to what extent, matters other than the provision of support could contribute to the achievement of the outcomes that the young carer wishes to achieve in day-to-day life."

113: Clause 64, page 52, leave out line 25 and insert "young carer"

114: Clause 64, page 52, line 33, at end insert—

"( ) But in a case where the young carer is not competent or lacks capacity to understand the things which the local authority is required to give under subsection (3), that subsection is to have effect as if for "must give the young carer" there were substituted "must give the young carer's parents"."

Amendments 109 to 114 agreed.

Clause 65: Assessments under sections 58 to 64: further provision

Amendments 115 to 117

Moved by ***Earl Howe***

115: Clause 65, page 53, line 6, leave out subsections (2) and (3) and insert—

"(2) A local authority may combine a child's needs assessment or young carer's assessment with an assessment it is carrying out (whether or not under this Part) in relation to another person only if the consent condition is met in relation to the child to whom the child's needs or young carer's assessment relates and—

(a) where the combination would include an assessment relating to another child, the consent condition is met in relation to that other child;

(b) where the combination would include an assessment relating to an adult, the adult agrees.

(3) A local authority may combine a child's carer's assessment with an assessment it is carrying out (whether or not under this Part) in relation to another person only if the adult to whom the child's carer's assessment relates agrees and—

(a) where the combination would include an assessment relating to another adult, that other adult agrees, and

(b) where the combination would include an assessment relating to a child, the consent condition is met in relation to that child.

(3A) The consent condition is met in relation to a child if—

(a) the child has capacity or is competent to agree to the assessments being combined and does so agree, or

(b) the child lacks capacity or is not competent so to agree but the local authority is satisfied that combining the assessments would be in the child's best interests."

116: Clause 65, page 53, line 24, leave out from "in" to ", the" in line 25 and insert "relation to the person to whom the assessment relates or in relation to a relevant person"

117: Clause 65, page 53, line 30, at end insert—

"( ) A person is a "relevant person", in relation to a child's needs, child's carer's or young carer's assessment, if it would be reasonable to combine an assessment relating to that person with the child's needs, child's carer's or young carer's assessment (as mentioned in subsections (2) and (3))."

Amendments 115 to 117 agreed.

Amendments 118 and 119

Moved by ***Earl Howe***

118: After Clause 66, insert the following new Clause—

"Independent advocacy support: involvement in assessments, plans etc.

(1) This section applies where a local authority is required by a relevant provision to involve an individual in its exercise of a function.

(2) The authority must, if the condition in subsection (4) is met, arrange for a person who is independent of the authority (an "independent advocate") to be available to represent and support the individual for the purpose of facilitating the individual's involvement; but see subsection (5).

(3) The relevant provisions are—

(a) section 9(5)(a) and (b) (carrying out needs assessment);

(b) section 10(7)(a) (carrying out carer's assessment);

(c) section 25(3)(a) and (b) (preparing care and support plan);

(d) section 25(4)(a) and (b) (preparing support plan);

(e) section 27(2)(b)(i) and (ii) (revising care and support plan);

(f) section 27(3)(b)(i) and (ii) (revising support plan);

(g) section 59(2)(a) and (b) (carrying out child's needs assessment);

(h) section 61(3)(a) (carrying out child's carer's assessment);

(i) section 64(3)(a) and (b) (carrying out young carer's assessment).

(4) The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—

(a) understanding relevant information;

(b) retaining that information;

(c) using or weighing that information as part of the process of being involved;

(d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).

(5) The duty under subsection (2) does not apply if the local authority is satisfied that there is a person—

(a) who would be an appropriate person to represent and support the individual for the purpose of facilitating the individual's involvement, and

(b) who is not engaged in providing care or treatment for the individual in a professional capacity or for remuneration.

(6) For the purposes of subsection (5), a person is not to be regarded as an appropriate person unless—

(a) where the individual has capacity or is competent to consent to being represented and supported by that person, the individual does so consent, or

(b) where the individual lacks capacity or is not competent so to consent, the local authority is satisfied that being represented and supported by that person would be in the individual's best interests.

(7) Regulations may make provision in connection with the making of arrangements under subsection (2); the regulations may in particular—

(a) specify requirements that must be met for a person to be independent for the purposes of subsection (2);

(b) specify matters to which a local authority must have regard in deciding whether an individual would experience substantial difficulty of the kind mentioned in subsection (4);

(c) specify circumstances in which the exception in subsection (5) does not apply;

(d) make provision as to the manner in which independent advocates are to perform their functions;

(e) specify circumstances in which, if an assessment under this Part is combined with an assessment under this Part that relates to another person, each person may or must be represented and supported by the same independent advocate or by different independent advocates;

(f) provide that an independent advocate may, in such circumstances or subject to such conditions as may be specified, examine and take copies of relevant records relating to the individual.

(8) This section does not restrict the provision that may be made under any other provision of this Act.

(9) "Relevant record" means—

(a) a health record (within the meaning given in section 68 of the Data Protection Act 1998 (as read with section 69 of that Act)),

(b) a record of, or held by, a local authority and compiled in connection with a function under this Part or a social services function (within the meaning given in section 1A of the Local Authority Social Services Act 1970),

(c) a record held by a person registered under Part 2 of the Care Standards Act 2000 or Chapter 2 of Part 1 of the Health and Social Care Act 2008, or

(d) a record of such other description as may be specified in the regulations."

119: After Clause 66, insert the following new Clause—

"Independent advocacy support: safeguarding enquiries and reviews

(1) This section applies where there is to be—

(a) an enquiry under section 42(2),

(b) a review under section 44(1) of a case in which condition 2 in section 44(3) is met or a review under section 44(4).

(2) The relevant local authority must, if the condition in subsection (3) is met, arrange for a person who is independent of the authority (an "independent advocate") to be available to represent and support the adult to whose case the enquiry or review relates for the purpose of facilitating his or her involvement in the enquiry or review; but see subsections (4) and (6).

(3) The condition is that the local authority considers that, were an independent advocate not to be available, the individual would experience substantial difficulty in doing one or more of the following—

(a) understanding relevant information;

(b) retaining that information;

(c) using or weighing that information as part of the process of being involved;

(d) communicating the individual's views, wishes or feelings (whether by talking, using sign language or any other means).

(4) The duty under subsection (2) does not apply if the local authority is satisfied that there is a person—

(a) who would be an appropriate person to represent and support the adult for the purpose of facilitating the adult's involvement, and

(b) who is not engaged in providing care or treatment for the adult in a professional capacity or for remuneration.

(5) For the purposes of subsection (4), a person is not to be regarded as an appropriate person unless—

(a) where the adult has capacity to consent to being represented and supported by that person, the adult does so consent, or

(b) where the adult lacks capacity so to consent, the local authority is satisfied that being represented and supported by that person would be in the adult's best interests.

(6) If the enquiry or review needs to begin as a matter of urgency, it may do so even if the authority has not yet been able to comply with the duty under subsection (2) (and the authority continues to be subject to the duty).

(7) "Relevant local authority" means—

(a) in a case within subsection (1)(a), the authority making the enquiry or causing it to be made;

(b) in a case within subsection (1)(b), the authority which established the SAB arranging the review."

Amendments 118 and 119 agreed.

Clause 67: Recovery of charges, interest etc.

Amendment 120

Moved by ***Lord Lipsey***

120: Clause 67, page 57, line 17, leave out from "person" to "in" in line 18 and insert "fraudulently or negligently misrepresents or fails to disclose any material fact that they might have reasonably been aware would have a bearing on expenditure incurred by the local authority"

Lord Lipsey (Lab): My Lords, I hope that this can be a short, sharp debate because it is about a very clear matter of principle.

Clause 67(4) provides that councils can recover money paid out on claims for any benefit in Part 1 of the Bill which are made in error—and here are the operative words—"whether fraudulently or otherwise". My amendment would substitute a longer form of words whereby councils can recover where a claim,

"fraudulently or negligently misrepresents or fails to disclose any material fact that they might have reasonably been aware would have a bearing on expenditure incurred by the local authority".

That is designed to narrow the scope of the "otherwise" that allows councils to recover in all circumstances. In other words, as the Bill stands, someone who applies for a benefit who inadvertently errs in their application can be pursued to repay the full resulting cost to the council, including the cost of the council's action, I think. My amendment preserves the recovery if the claim was fraudulent but otherwise allows it only if the old person was negligent. In a sentence, it protects the claimant who makes a slip.

I will give an example of what could happen under the Bill as it is worded. An old person applies for a deferred payment loan on their house so as not to have to sell it. Unfortunately, they make a slip in declaring their assets: they forget some bank account or other. If they had declared it, their assets would have exceeded the £23,250 limit, which the House discovered to its surprise now applies to anybody who wishes to apply for a loan; they cannot apply for a loan if they have more than £23,250. The local authority later finds out and demands its loan back; it perhaps forces the house to be sold to pay it back. I do not suggest that this is going to happen regularly or often but we should not allow the possibility that it should happen at all.

I raised this matter in Committee and subsequently discussed it, with the Minister's encouragement, with his officials. My aim was to find a compromise that protected the old person who had made a mistake in applying for the benefit while enabling the local authority to go after somebody who was deliberately trying to get something they were not entitled to or who had behaved extremely stupidly and should have known better than to claim.

I thought we were making headway in those discussions but last week the Minister sent me a note refusing to change the Bill. I must say that this is wholly out of character for the noble Earl, Lord Howe, who is usually the most humane of men, and I beg him to think again. If he does not like my wording, that is fine; I am quite happy to consider any other wording that he and his officials may put forward that avoids the pitfalls I suggested. What I will not accept is anything short of an amendment to the Bill.

I know, because he said so in his note to me, that the Minister may claim that he can provide guidance which stops this sort of illegitimate recovery of a debt incurred through error. To that I say two things: first, a bird in the hand is worth two in the bush and I would rather change the Bill now than to rely on promised guidance, which we have not seen and could not later amend; secondly, it is not only the people the council would prosecute or seek to get their money back from that we need to worry about. A lot of old people are quite nervous about handling financial affairs—quite rightly, given the complexity of these affairs. They might be thinking of applying for a benefit but if they learn that, under a Bill passed by this Parliament, if they make a slip they can have their assets seized to repay it, many of them will simply decide not to apply at all.

I think I have a pretty thick skin but I was a bit surprised when I read in the newspapers this morning a Conservative spokesman quoted as saying that this was a politically motivated amendment. Just to set the record straight: it was not my idea to amend the Bill in this way. This amendment was put forward by Age UK, which sent a note to all noble Lords explaining why it believes it to be necessary. We all know Age UK: it is a splendid group working for old people. The noble Baroness, Lady Greengross, used to run its predecessor. A less political organisation than Age UK is hard to imagine, so I hope that the Minister will apologise for the inadvertent—I am sure—slur that has been cast on Age UK.

I should add that Age UK believes that the Bill may be in breach of Article 6 of the European Convention on Human Rights. In a House which earlier on displayed such expertise on the subject of the European Convention on Human Rights, I am certainly not going to express my own opinion on whether that view is right or wrong. Nothing could be more stupid than for us to pass this Bill in its present form and later on to find it challenged in the courts, and perhaps overturned.

My argument does not rely on the convention on human rights. It relies on what seems to me to be a simple fact, obvious to anybody who reads this clause in the Bill. This is not the kind of legislative provision that you would expect in a democracy. It is a provision which enables authorities here, in Britain, to punish the innocent and, in the process, to terrify people who might otherwise apply for benefits to which they are entitled. I beg to move.

6 pm

Lord Hunt of Kings Heath: My Lords, I support my noble friend. In our debates, both in Committee and on Report, we spent a considerable time talking about some of the complexity of the decisions that have to be made when it comes to the financial affairs of many people who require long-term care. In our debate on Clause 4, we talked about the need for regulated financial advice, because these issues are so complex. It is quite likely that people who are providing information to a local authority will make slip-ups. The kind of forms that have to be filled in can be very difficult. Clause 67(4) states:

"Where a person misrepresents or fails to disclose (whether fraudulently or otherwise)".

That does seem a very wide definition of when a local authority can demand sums. My noble friend has come up with a compromise. He has tried to narrow the circumstances in which a local authority can require sums to be paid back to that authority.

I understand the concerns of the Government. They believe that completely to change this would lead to some perverse incentives in that people would deliberately give false information. My noble friend has met those concerns with his amendment because

he has clearly drawn a distinction between fraudulent activity and claims, and slips and mistakes which are inevitably going to be made. Even at this late stage, it would be helpful if the noble Earl could reconsider this matter. I think my noble friend has put his finger on an important matter here. We are talking about very vulnerable people who will find the information required to be given to a local authority very complex. We need to make sure that we are as sympathetic as possible to those people.

Baroness Bakewell (Lab): My Lords, I wish to address the one word "otherwise". I come under that category of otherwise. Since arriving in the House—let me see now, when was it? I am getting quite old; I can put the wrong statistics down on pieces of paper. Yes, I think it was 2011. I have in the course of the time since then turned up at the House on the wrong day. I got it wrong—not deliberately, not fraudulently, but for "otherwise" reasons—because I am old. I forget to have my post redirected during the Recess and come back to a mountain of post which I have not been able to answer, all because I get the dates wrong. That is because I am old.

As people get older, life gets more threatening. The bureaucracy weighs down on us more and we are frightened of authority. That is why I choose to support my colleague in—which amendment is it? Yes, Amendment 120.

Lord Mackay of Clashfern: My Lords, it occurs to me that the problem has been created by the use of the word "fraudulent". It tends to suggest that the word "otherwise" is in some way connected with that. I wonder whether one could not take out that whole phrase in brackets. The idea is that, because of some mistake, something extra has been paid out. Ordinarily, it might be perfectly all right to recover that. You do not need to look into the detail of why it was wrong. The person in question—vulnerable people particularly, and those who are not so vulnerable, more recently arrived—may fall into error. The error may result in extra payments out by the local authority which, in ordinary circumstances, it should be able to recover. "Fraudulently" gives an idea of people trying to put something over on someone, and "otherwise" tends to be coloured by the same adverb. Perhaps this problem could be dealt with in that way.

Earl Howe: My Lords, we agree with the general view expressed by noble Lords that we must ensure that vulnerable elderly people are protected and are not discouraged from seeking help when they need it. However, I do not agree with the conclusions reached by the noble Lord, Lord Lipsey, and I regret to have to say that the manner in which he has expressed his concerns risks causing unnecessary worry to people who need care and support. Let me be clear: this power is not there to punish people, as the noble Lord put it, and should be used by local authorities only as a last resort, as I shall explain. Its purpose is to ensure that any charges that should have been paid can subsequently be recovered. It is not to penalise people unduly. But neither should the system reward mistakes or prevent unpaid charges being recovered. This would not only undermine the principle of personal responsibility, it could also result in local authorities having less money to provide care and support to those who need it the most. In practice, it means in some cases a licence to subsidise the better off at the expense of the worse off. Is that really what the noble Lord wants? The use of this power is to recover a debt and is not intended to imply a judgment about the person's culpability. It does not look for the mens rea; it exists to ensure only that charges not paid can be recovered, as the equivalent current powers do now.

The principle of this provision is not new; the power is 60 years old. The noble Lord likes to make out that we are doing something radically new, but that is not the case. We recognise that there may be a number of reasons why someone has not paid the full amount of the charges due to the local authority, including misrepresentations of their assets which were entirely unintentional. But even where the reason is an accident or a mistake, local authorities still suffer a loss and must be able to recover that loss if there is no other means of doing so. This is public money.

One of the objectives of the Bill is to make access to care and support easier and more focused on people with care and support needs and their families. We expect local authorities to help and support people with care and support needs, discussing any concerns they have and providing advice and assistance as appropriate. This would include advice to help people understand the process of financial assessment and their responsibility to disclose financial assets. I absolutely fail to see why the noble Lord thinks it is socially just to allow people who misrepresent or fail to disclose their assets, whether intentionally or not, to receive more than their fair share of financial support. I reiterate that to do so would reduce the resources available to other people with care and support needs. That is what his prescription amounts to. I am concerned that this amendment would risk making it much easier for people to take advantage of the system and avoid charges and subsequent legal action. What the noble Lord is suggesting is that people could be as careless as they liked when filling out the form. Is that what he wants? The high evidential burden that local authorities would have to meet to recover debts risks making this power largely useless in practice. It would leave local authorities facing costly and uncertain legal action if they chose to pursue the matter.

Let me be clear on another point. A local authority should not, as a matter of course, use these powers to recover debts without first having discussed other options with the individual concerned. In most cases, especially those where the failure to pay the correct charges was inadvertent, there would be other simpler routes to follow, such as agreeing a repayment plan which allows for recovery over time in a way that is manageable. The noble Lord suggests that local authorities may exercise these powers in a way that will drive people out of their own homes. Quite aside from the fact that we have no evidence that local authorities behave in that way and have used their existing powers like that, I have to say that I find that assertion particularly unconvincing.

Local authorities are bound by the public law principle of acting reasonably at all times and must act in accordance with human rights legislation, as well as

[Earl Howe]
the well-being principle, which we have already debated. That alone should prevent a local authority using this power to force someone out of their home. The noble Lord is stretching our credulity if he is asking us to imagine a set of circumstances in which a court would make an order in favour of a local authority knowingly to evict a person from their home in this kind of situation. It would be counterproductive in the extreme. Should there be any possibility of this happening, we would use statutory guidance to make the position clear. Indeed, where I do think further action is needed is in the form of guidance. We will use statutory guidance under the Bill to set out the steps that we expect local authorities to take. For example, we would expect a local authority to discuss the situation with the cared-for person and their family when appropriate to establish what, if anything, is owed to the local authority; if there is a debt, to establish whether it is appropriate to recover it, because the local authority does not have to recover it—it can choose not to do so; and, lastly, if money needs to be recovered, to find an affordable way for the money to be repaid. As I have said, whether or not the person could have been reasonably aware of something that needed to be included in the financial assessment is one of the factors that the local authority should consider when deciding whether it is appropriate to recover a debt.

We plan to engage with local authorities in the wider sector on what happens at present and how this could be improved. I accept the need for effective communication about financial assessment and the recovery of charges. This highlights the importance of high quality information and advice, including financial advice, which was debated last week, and the importance of the new duties we are placing on local authorities in this regard. Should mistakes be made, people will not be criminalised, nor will any punitive charges be imposed, but ultimately it is right that mistakes are rectified so that individuals do not benefit from any errors they make, whether they were intentional or not. Neither local authorities nor those who rely on their services should be disadvantaged, but the amendment as it stands runs the risk of failing on all these counts.

I hope that I have reassured noble Lords that the debt recovery power, while to be used only as a last resort, remains important. There is nothing that people should fear from its use. I therefore hope that the noble Lord, on reflection and at this late time, will feel able to withdraw his amendment.

6.15 pm

Lord Lipsey: My Lords, I thank the Minister for that reply and I predict that in the handbook which all civil servants use to train themselves in their art, his reply will figure as an example of how best to argue an indefensible case, because that is what I think he has just done. "Resent" would be too strong a word, but the argument that by raising this matter I am creating a problem and raising the fears of old people is not plausible. This is what Governments do the whole time: they try to do something wicked, but when that is pointed out to them, they say, "Oh no, it is you who is causing the trouble because you are pointing out that it is wicked". The fears are raised not by my speeches or interventions; they are raised by the words in the Bill to which the Minister has put his name.

The Minister also said that this power is all right because it is 60 years old. To that I have two things to say. If a power like this has been lurking around in legislation for 60 years, it is about time we took a little look at it, and I hope the noble Earl will start some such operation. Wherever that power exists now, this is a different case because here we are dealing with elderly people. As my noble friend Lady Bakewell so graphically pointed out, with the best will in the world, older people can make mistakes. Whether it applies to other social security legislation, I cannot say. It may do so, but I do not think it is appropriate to this legislation.

The Minister then rightly said that if a local authority goes to court, the court will not grant the order. But before the local authority goes to court, it will have to deliver a letter to the old lady saying that it is going to do so. What will be the impact of that? Is she going to say, "Oh, that is fine. The court will turn it down. I will see my solicitor or my son and get this defeated". No, the old lady will be thrown into a panic as a result of what the local authority is doing. I agree totally with the Minister that most of the time, most local authorities act perfectly reasonably. That is not what is at issue here. What is at issue is whether on the face of primary legislation there should be the scope for the odd authority to act unreasonably and thereby cause terrible fear and distress to older people. That is what the noble Earl, I am sure inadvertently, is doing.

Finally, I turn to the most powerful of the Minister's arguments. He said that this would be very unfair because people would get away with it and they would gain at the expense of others who are also claiming benefits. But I beg the Minister and the House to study my amendment. It does not say, "Well, if you fill in the form inattentively and get it totally wrong, you will get away with it". That would come under the phrase in my amendment, "they might have reasonably been aware". In most conceivable circumstances, my amendment would allow recovery in just the same way as the Government's drafting, but it would do so without that frightful "or otherwise". It is a sword of Damocles being held over the heads of many innocent older people, and they should be spared from that.

The Minister has made his speech and the House has heard both sides of the case. I think that it is time to test its opinion in the Division Lobbies.

6.17 pm

Division on Amendment 120

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Stephen, L.
Sterling of Plaistow, L.
Stewartby, L.
Stirrup, L.
Stoneham of Droxford, L.
Storey, L.
Stowell of Beeston, B.
Strasburger, L.
Strathclyde, L.
Taylor of Goss Moor, L.
Taylor of Holbeach, L.
Teverson, L.
Tordoff, L.
Trefgarne, L.
Trenchard, V.
Trimble, L.
True, L.
Tugendhat, L.
Tyler of Enfield, B.
Tyler, L.
Ullswater, V.
Verma, B.
Waddington, L.
Wakeham, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walton of Detchant, L.
Warsi, B.
Wasserman, L.
Wei, L.
Wheatcroft, B.
Whitby, L.
Wilcox, B.
Williams of Crosby, B.
Willis of Knaresborough, L.
Wolfson of Aspley Guise, L.
Younger of Leckie, V.

6.30 pm

Amendment 121

Moved by ***Lord Hunt of Kings Heath***

121: Before Clause 69, insert the following new Clause—

"Initial funding assessment

Before enactment of Part 1, the Secretary of State must ask the Office for Budget Responsibility to complete by the end of 2014 a review of the funding of adult social care that assesses—

(a) the adequacy of current public funding of these services;

(b) the proposals for funding the provisions in this Act;

(c) the implications of the Act and its funding for the NHS over the next five years; and

(d) in particular the short and long term costs of setting the eligibility criteria at the level set out in regulations."

Lord Hunt of Kings Heath: My Lords, as I said on Monday, the principles which underpin this Bill are widely supported, although recent revelations around deferred payments have put a considerable damper on that. We have been concerned in our debates mostly with trying to improve the Bill. A major feature of discussions has been the capacity of local authorities to do what is required, including responsibilities around assessment, providing information, preventing needs for care and support, promotion of integration, provision of information and support, direct payments, promotion of diversity and quality in the provision of services, and dealing with provider failure. Another concern has been about the amount of resources that will be available to make the Bill effective—the more so when one considers the number of self-funders who will in the end receive support as a result of the introduction of the cap.

This is done in the context a very tight funding situation for health and care generally. The Minister will be aware of reports from both the King's Fund and the Nuffield Trust, and, more recently, from the NHS Confederation, which talked of the problems in healthcare and of there being basically no growth in real-terms funding in the next few years, together with a big increase in demand.

This is matched, and more so, by the additional costs which it is clear will fall to local authorities to meet the extra care responsibilities that they have been given. The Explanatory Notes to the Bill are rather disarming. They state:

"Most of the costs to the public sector associated with Part 1"—

which is what we are discussing—

"arise from introducing and funding a cap on care costs and from the proposed increase to the capital threshold. These are partly offset by consequential reduction in costs of attendance allowance and disability living allowance".

The Minister cannot be in ignorance of the widespread concern among local authorities that, in essence, the Bill places many additional financial responsibilities on local authorities for which they have little confidence they will receive proper support from the Government. Let me give one example. We know that the settlement for 2013 provided £335 million so that councils can prepare for reforms in the system of social care funding, including the introduction of a cap, and a universal offer of deferred payment agreements from April 2015—this was in the guidance issued by CLG. That money was intended to cover assessment and reviews, capital investment in systems, capacity-building in individual councils, information and advice, and introduction of deferred payments from April 2015. However, my understanding from the Local Government Association is that that £335 million was not new money; indeed, it was top-sliced from the local government settlement. So the cost associated with funding reform should be

seen as a new burden and funded as such. If that is only associated with the introduction—essentially with helping local authorities prepare for the provisions in this Bill—how much more will the additional funding responsibilities be when it is actually up and running?

There is widespread concern and doubt about local authorities' capacity to set up the infrastructure to do the job, but the funding issue is even more important. That is why my Amendment 121 suggests that the Secretary of State asks the Office for Budget Responsibility to complete a review of the funding of social care that assesses the adequacy of current public funding of these services, the proposals for the funding of provisions in this Act, the implications of the Act and its funding for the NHS over the next five years and in particular the short- and long-term costs of setting the eligibility criteria at the level set out in the regulations.

The Office for Budget Responsibility has been established and we see many uses for it. This would be a very good way of getting an impartial view of the future costs resulting from the Care Bill and of the likely consequences for local authorities and the Bill's funding. In the spirit of harmony and consensus which has prevailed over much of our discussions, I think it would be very good if the Government agreed to do this. It would provide us with a very good foundation and also help in taking forward the Bill and in terms of local authorities' actual ability to implement the provisions. I beg to move.

Lord Warner: My Lords, I want to speak to Amendment 122 in my name. This requires the Secretary of State to publish a review of the working of Part 1 and its funding before Clause 15 is brought into operation.

I have tabled this amendment because of my continuing concern that the Government are sleepwalking into the introduction of the new arrangements in this Bill without adequate funding provision and they do not really appreciate the parlous state of adult social care funding. I think my noble friend was being rather generous in his remarks. The situation is very bad. I have a cutting about the Equality and Human Rights Commission's report into home care, published last week, in which the commission made it clear that council cuts could be affecting the human rights of older people. This is a serious situation.

People are very supportive of the basic architecture of the Dilnot and the Law Commission's proposals enshrined in this Bill, and are very supportive of the Government bringing this Bill forward, but they simply do not believe that the funding is in place effectively to implement the Bill's good intentions. They remain unconvinced by the Government's assurances on funding and I think this is hardly surprising because the Government's social care funding strategy seems almost designed to confuse. We have Eric Pickles signing up to quite swingeing cuts to local authority grants which inevitably reduces social care funding substantially. We then see Health Secretaries having to scrabble around to slip NHS cheques to local government to mitigate some of the Pickles cuts. Of course I do not want to be ungenerous to Health Secretaries, and these cheques are better than nothing, but they do not make good the shrinking base budget of adult social care that has been taking place over many years.

People like to claim and use bits of the Dilnot commission's report that they favour and fancy. I would like to draw attention to pages 14 and 15, where we said:

> "We know that the funding of social care for older people has not kept pace with that of the NHS. In the 15 years from 1994-95 to 2009-10, real spending on adult social care increased by around 70% for older people while, over the same period, real spending in the NHS has risen by almost 110%".

We showed in this report that in the four years to 2010, demand outstripped expenditure by about 9%. We went on to say that in the future this approach to funding was going to need to change. It has changed, but not quite as we had expected or intended.

Adult social care will start the next financial year with a base budget about £3 billion lower in real terms than in 2010. So the base budget for social care is underfunded. That is where we start from. Most of the discussion that has taken place about the implementation of the Bill takes no account of the base budget deficit from which we are starting. That deficit is due only to get worse because there is another set of proposals under the DCLG settlement in Spending Review 2013 for another 2.3% cut in the budgets of local councils, which can only take even more money out of the local government budget for adult social care.

I have no doubt that the noble Earl will say much the same thing as he did in Committee about the Government's proposal for a £3.8 billion pooled budget for 2015-16 to join up health and social care services. I welcome that. Most people welcome that. However, as the Minister acknowledged in Committee, only half of that £3.8 billion is new money, and only half of the new money will be paid upfront to local authorities as they start to implement the proposals under the scheme. The assurance that that new money will be in place takes no account of the further reduction of 2.3% that I mentioned in the spending of local councils in 2015-16.

We have a situation where the base budget is highly deficient, further cuts are coming out of local government expenditure by councils, which can only have a further impact on that base budget in 2015-16, when the new legislation is due to be implemented, and we have no guarantee that the lion's share of that £3.8 billion pooled budget will be in the hands of councils when they start to implement the scheme. That is not a situation to fuel people outside with confidence that they will have successful implementation of the legislation.

The Government can protest as much as they like but, at the end of the day, we need public documentation —preferably, I would say, by someone as independent as the OBR, but I would even settle for the Institute of Fiscal Studies. If I cannot have that, I would settle for legislation requiring the Secretary of State to put some of that information in the public arena and before Parliament before the Bill is put into full operation. People who are to implement it and the public need far more convincing than they have received so far that all will be well financially, to give people a reasonable chance to implement this highly desirable, on the whole, well constructed Bill, successfully when the time comes.

Earl Howe: My Lords, I have listened with care to noble Lords as they have introduced their respective amendments and I am confident that we can all agree

[Earl Howe]
that the issues that they raise are vital to the successful implementation of government policy and are essential parts of good policy-making. Let me first address the questions about the cost and funding of these reforms. We have taken and will continue to take a robust, evidence-based approach to assessing the cost of the reforms. We are working closely with local authorities to help them to understand the costs at a local level, and we will use this knowledge to refine our national modelling further. Funding of care and support, including the reforms in Part 1, will be reviewed regularly as part of the spending review process, and the core elements of the capped-costs system will be reviewed within each five-year period.

Turning to the specific issue of the short and long-term costs of the national eligibility threshold, I can assure noble Lords that we have published an impact assessment fully setting up the costs and benefits of the policy. We have comprehensively assessed and funded those provisions. We have published impact assessments for all elements of the Bill and, in line with the Government's approach to all new burdens on local authorities, those costs were fully funded in this year's spending round. Those estimates are based on the best available evidence in the area. They have been produced in co-operation with academic experts and officials from across government.

6.45 pm

Similarly, I can assure the noble Lords and the noble Baroness that we have fully considered the wider impact of the reforms, including the impact on the NHS. It really would not be productive to ask the OBR to repeat that analysis in 2014. That would simply repeat what has already been done, and it would have no further evidence on which to base its work, even if it were to do it. Nor would that be an appropriate role for the OBR, which is independent and has complete discretion to determine the content of its publications and its programme of research and analysis.

The noble Lords and the noble Baroness are of course absolutely right that it is essential that sufficient funding is made available for the successful implementation of these reforms. In addition, when allocating funding for its policies, the Government need to take a broad overview of activity across all public services so that we can make the best possible decisions. That is the purpose of the spending review process and why a spending review is the best place to make funding decisions. I struggle to see how a separate official process considering funding for care and support in isolation is either appropriate or desirable.

The noble Lord, Lord Hunt, also suggests that we review the adequacy of public funding for social care services, a point reiterated by the noble Lord, Lord Warner. I can assure them that we have done precisely that in the recent spending round. As a response to the increasing demand for care and support, we have taken steps to ensure that adequate funding will be available. We have increased the NHS contribution to care and support with the health benefit by £200 million in 2013-14, taking the total amount to £1.1 billion and have gone further in 2015-16 by creating a £3.8 billion pooled budget for health and social care, which will provide the resources to protect care and support services and break new ground in driving closer integration.

However, of course, spending decisions for care and support will ultimately be taken by local authorities. Perhaps I could deal with the point raised by the noble Lord, Lord Hunt, when he suggested that the £335 million to which he referred had been topsliced from the local government settlement. That funding will be allocated by DCLG in 2015-16 as part of the local government settlement. That was agreed as part of the spending round, which reviewed all government spending, as I mentioned. There was no pre-existing settlement for 2015-16 before the spending round, so it is not true that this money has been topsliced.

I turn to the suggestion of the noble Lord, Lord Warner, that the Government should publish a review of the working of the reforms ahead of the first five-yearly review. Reviewing and evaluating those reforms is indeed essential; I agree with him on that. That is why we will conduct post-legislative scrutiny, as the Government have committed to do across the board for all new Acts. The agreement we have with the House Liaison Committee in another place is that that should be done between three and five years after Royal Assent. The joint programme and implementation board, which we have set up in collaboration with the Local Government Association and the Association of Directors of Adult Social Services, will also assure implementation, and we will work with local government on continuing assurance and improvement

I truly do not believe that it would be necessary or desirable to supplement those arrangements with further reviews, either by government or by other bodies. Such additional oversight would cut across the scrutiny conducted by the Health Select Committee and cross-government planning on spending through the spending round. I am sure the noble Lords will agree that it is only right that decisions on care and support are taken at the same time as spending plans are set for all areas of government.

I hope that noble Lords will be somewhat reassured and convinced by what I have said. I have a sinking feeling, looking at noble Lords opposite, that they may be intent on dividing the House. I ask them not to, and ask the noble Lord, Lord Hunt of Kings Heath, to withdraw the amendment. Their underlying concerns are perfectly reasonable, but I believe that their prescription is misplaced and quite unnecessary.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister, although I am disappointed by his response. He argues that the cost and funding elements in the Bill have been subject to a robust, evidence-based approach and are reviewed regularly, and he prays in aid the spending reviews. However, there is often a distance from ministerial assurances about well-being and the reality on the ground floor, and I have to say to him that the experience up and down the country is of a health and social care system under huge pressure. The Bill brings more pressures and many local authorities do not see how they will be able to find resources in order to pay for the extra demands and responsibilities the Bill places upon them. That is the reality up and down the country.

The noble Earl does not like the referral to the Office for Budget Responsibility. This is a remarkable institution set up by the Government with a great fanfare; now they seem very reluctant to use it. That is a great pity. My noble friend suggests the Institute for Fiscal Studies, another organisation to which we might refer it.

It would have been of great benefit to all of us concerned to see some independent work that could be published and would inform the Bill's implementation, but I fear the noble Earl is not going down that path. It is probably time to move on to another debate, so I beg leave to withdraw the amendment.

Amendment 121 withdrawn.

Clause 69: Five-yearly review by Secretary of State

Amendment 122

Tabled by ***Lord Warner***

122: Clause 69, page 59, line 10, at end insert—

"( ) In advance of the first five-yearly review, the Secretary of State must prepare and publish a review of the working of Part I and its funding before the date in subsection (4) and after consultation with interested parties."

Lord Warner: I am not going to detain the House. I remain unconvinced about the direction of travel that we are taking and I learnt long ago in Richmond House not to believe everything I was assured of which came to me in my Red Box. I hope that the Minister is right, but I have a terrible feeling that I shall be saying, "I told you so" in a few years' time.

Amendment 122 not moved.

Amendments 123 and 124 not moved.

Schedule 3: Discharge of hospital patients with care and support needs

Amendment 125 not moved.

Clause 71: After-care under the Mental Health Act 1983

Amendments 126 to 128

Moved by ***Earl Howe***

126: Clause 71, page 59, line 24, at end insert—

"(aa) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or"

127: Clause 71, page 59, leave out lines 25 to 27

128: Clause 71, page 59, leave out lines 30 to 33 and insert—

"(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—

(a) if the dispute is between local social services authorities in England, section 40 of the Care Act 2013 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;

(b) if the dispute is between local social services authorities in Wales, section 164 of the Social Services and Well-being (Wales) Act 2013 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;

(c) if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.

(4A) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them agree is to do so."

Amendments 126 to 128 agreed.

Amendment 128A

Moved by ***Lord Patel of Bradford***

128A: Clause 71, page 59, leave out lines 35 to 42 and insert—

"(5) In this section, "after-care services" means services that reduce the risk of a deterioration of the person's mental condition (and, accordingly, to reduce the risk of the person requiring admission to a hospital again for treatment for mental disorder)."

Lord Patel of Bradford (Lab): My Lords, I am speaking to Amendment 128A which affects Clause 71(5) that aims to provide a definition of "after-care services" as they relate to the Mental Health Act 1983.

We had an extensive debate on this clause in Committee and as a result the Government have tabled their own amendment. I am grateful to the Minister for Care and Support, Norman Lamb, and his officials for taking time to meet me and discuss my concerns about this clause. During the debate in Committee, I highlighted the importance of Section 117 in providing a comprehensive care package of health and social care services to a very specific and extremely vulnerable group of patients when they are discharged after detention in a psychiatric hospital. Without appropriate community health and social care support they may relapse, come to harm or even present a risk to others.

In recognition of the inherent vulnerability of these patients and the risks involved, and to encourage take-up by them, after-care services under Section 117 have required local authorities and clinical commissioning groups to provide after-care services free of charge and are deliberately not defined in statue, as there is a wide range of services that a detained patient might need in order to leave hospital and live in the community. Mental health professionals need to have the widest flexibility possible to devise creative care packages to keep patients who have been detained well and prevent them relapsing. The concept appears well understood by both health and local authorities and has been for over 30 years.

There is also a clear public health policy purpose behind Section 117, which is to help get vulnerable people out of hospitals and back into the community. No one should remain in hospital any longer than they need and after-care services should be provided to enable a safe discharge and to avoid all the emotional harm and exposure of a deterioration. This is vital to prevent our hospitals being bedblocked—I am sure that all noble Lords saw the news headlines this morning about the severe lack of in-patient psychiatric beds. So what does this clause do and why?

Clause 71(5) proposes to provide the first ever statutory definition of after-care services, but it is a narrow definition which I and many others believe will be detrimental to patients' welfare. For example, an

[Lord Patel of Bradford]
after-care package may include daytime activities, welfare benefits and financial advice, residential accommodation and medication. However, if the proposed definition is introduced, after-care providers may argue—I think they will argue—that it is only the provision of psychiatric medicine that meets,

"a need arising from … the mental disorder",

of the person.

I accept that the Government have made some concessions on this issue. For example, concerns were raised that the definition in the Bill refers to, "the mental disorder", which might refer only to the medical treatment of a single diagnosis, rather than looking at a person holistically. In response to these concerns, amendments have been tabled by the Government to make it clearer that Section 117 after-care services are to meet needs,

"arising from or related to the person's mental disorder".

That can mean one or more mental disorders, and not necessarily the mental disorder for which the person was detained in hospital for treatment. While this concession is, of course, welcome, and the current proposed definition is wider than that set out in the draft Bill, I still remain extremely concerned about the risk of confusion, litigation and delays, which is why I have tabled my amendments.

Noble Lords will be very relieved to hear that I will not repeat the many reasons I have for tabling Amendment 128A; I simply want to give two very clear reasons why this amendment should be accepted. First, I want to challenge the basis on which the Government have introduced this definition and say why it is wrong. Secondly, I think that the definition, even with the Government's amendment, remains problematic and harmful to patients.

The Government have clearly stated that they have put this definition into the Bill following the recommendation from the Law Commission's report *Adult Social Care*, a recommendation that is based on the Law Commission's concerns around one case, Mwanza v the London Borough of Greenwich in 2010. I am not a lawyer, but I had a nasty feeling about this case, so I contacted the counsel, Nicholas Armstrong from Matrix Chambers, who actually represented Mr Mwanza in this case, to get his views. I am extremely grateful for his time and the explanation he gave me. Suffice to say he was very concerned to hear that the case is being used in this way. He informed me that there were a number of issues that make this case unique and unrepresentative, explaining that,

"this is a very unstable basis on which to disturb a provision of primary legislation that has benefited many and operated largely without difficulty for 30 years (rather a long time in these areas of law and, some might feel, a testament to its success)".

I have shared the full contents of the communication from Nicholas Armstrong with the Department of Health so that it can clearly see the issues and concerns that Mr Armstrong has raised about his own case. Most importantly, he states:

"Mwanza was highly unusual and complex. First, it is critical to recognise that it was a migrant case. The family had no immigration status and so were cut out of mainstream benefits and sources of support, including housing. Their possible routes to support and, in particular, accommodation were therefore very limited. Normally, accommodation is not an issue because people get it from any number of other routes. Not so here . . . Second, the Section 117 issue had to be addressed here, despite how difficult it was, because of the way the other possible route to accommodation (Section 21 of the National Assistance Act 1948), works. That provision cannot provide accommodation if there is an alternative. Hence, to resolve where a Section 21 duty was owed, the court had first to decide whether Section 117 applied . . . We were, in other words, only in Section 117 at all because of the way the migrant exceptions work."

The situation was then complicated by the detention under Section 3 many years earlier—about eight to nine years prior to this case—and it looked like the duty had not been discharged properly by the local council. Nicholas Armstrong continued:

"It is critical to recognise that it was a disabled migrant case where another local authority wanted to avoid liability under Section 21 of the National Assistance Act 1948, and we had to resolve the Section 117 question because we could not get to Section 21 unless Section 117 was definitely not in play . . . That was a pretty rare set of circumstances. So far as Section 117 is concerned, Mwanza is a permission decision only. It was fully argued but it is not binding, even on courts below the High Court".

7 pm

As Nicholas Armstrong says, I am not convinced that this is a very stable basis on which to disturb the provision of primary legislation that has benefited many and operated largely without difficulty for the last 30 years. I accept that some effort has been made to address the issue by devising the Care Bill's Explanatory Notes, but I do not think that goes far enough. In fact, this just highlights for me how unclear and confusing the proposed definition is—if you need Explanatory Notes to clarify something in the Bill, why are you doing it?

Even putting Mwanza aside, I have consulted widely on the proposed definition, and I must say that so far only the Department of Health officials and the Law Commission believe that this is the way forward. No one operating in the mental health field that I have spoken to, no experts or professionals, agrees that this is the right way forward. I have had discussions with, among others, representatives from Mind, the national mental health charity, the mental health and disability committee of the Law Society and the Mental Health Lawyers Association, all of which have reached a consensus that, even with the extended Explanatory Notes, they still believe that the best outcome would be to remove Clause 71(5)(a). The Care and Support Alliance, representing over 70 organisations, after having taken extensive legal advice, firmly believes that paragraph (a) is too restrictive.

The reasons for this are that, first, the proposed definition as it stands is too restrictive and will not clarify the purpose or content of aftercare packages; rather, it will narrow and limit the services that can be regarded as aftercare services, so it runs the risk of imposing a medical model. Secondly, it opens the way for legal disputes and conflicts about whether or not a service is directly linked to a person's mental disorder, and there is a real risk that aftercare services will be narrowly interpreted, encompassing only health provision.

I have a whole batch of real case examples provided by Mind and others although, again, I will not share them with the House today. Given all these points and

all the consultation that I have done, my preference would be for the Government to delete Clause 71 altogether. However, if a definition is to be introduced, it must retain a broad, flexible approach. Therefore, in the spirit of co-operation, which I know that the Minister always aims for, and in trying to reach a way forward, I propose Amendment 128A, which once again I urge the Government to consider seriously. I beg to move.

The Lord Speaker: I remind your Lordships that if this amendment is agreed, I cannot call Amendments 129 to 131 by reason of pre-emption.

Baroness Masham of Ilton (CB): My Lords, it is vital that people with mental illness have adequate aftercare. I ask the noble Lord, Lord Patel of Bradford, if his Amendment 128A would cover such cases as the tragic case of the schoolgirl who was travelling by bus to school and was killed by a person who was mentally ill. There should be more protection for the public, who are at risk of mentally ill people who are let loose in the community without adequate aftercare and supervision. It is vital that people have aftercare, otherwise we will have more and more disasters.

Lord Patel of Bradford: I thank the noble Baroness for her question. I would not like to associate mental health patients leaving hospital with the case that she has outlined, but clearly it is true that if we do not provide good quality aftercare services and encourage people to take them up but rather leave people in hospital anxious about whether they will have to pay for some of these services, then that is a potential result that we will have to live with, in circumstances where people do not have accommodation, health and social services provided or someone coming in and saying to them, "Deal with your accommodation and social care issues as well as your medication". This is a real anxiety.

Baroness Hollins (CB): My Lords, I commend the amendment by the noble Lord, Lord Patel of Bradford. I shall not say much more than that other than that he commented on the risk that the current situation could lead to more likelihood of a more medical approach to aftercare. Noble Lords might think that as a retired psychiatrist I would support that, but I do not; it is incredibly important that people who have a history of mental illness and need aftercare services receive the broadest possible support so that admission to hospital is not simply because there is inadequate support for them in the community. I commend his proposal.

Baroness Barker (LD): My Lords, I wish to indicate my support for the continuance of Section 117, as I have done on many occasions before, not least during the passage of the most recent Mental Health Act—when various people, whom I shall not embarrass now by saying who they were, did indeed stand up to defend some of it—because it works.

When the Law Commission first made this proposal in its report, I had occasion to talk to that body. The noble Lord, Lord Patel, is right; the commission relies very heavily on the Mwanza case, and there is a great deal of dispute about the advisability of doing that. The question that I had when I first met the Law Commission still remains: when everything else in the legislation is geared towards enabling health and social care to work together to enable the transfer of people from acute health settings back into the community, why rip up the one piece of legislation that has been there doing that for 30 years? It is not just that some of us see Section 117 as being important with regard to the individuals whom we might know or come across; rather, we see it as an important means of bringing about the transfer that some of us have long hoped would happen in mental health services whereby, instead of having patients who revolve between acute and the community, we could have proper care planning in which people's mental health needs were addressed by some of the same people, whichever setting they were in. It is not just about trying to preserve a pot of money; it is about trying to keep open a pathway to good and better practice. That is why the noble Lord, Lord Patel, as he always does in this area, has presented the House with a very persuasive argument. I have not yet fully understood why the department feels the need to make the changes that it is making.

Baroness Wheeler: My Lords, we fully support my noble friend in his valiant efforts once again to try to get this important issue on mental health aftercare sorted out. We recognise the Government's concession in removing "the" from subsection (5)(a), but my noble friend is right that there still remains the very real risk that leaving the rest of the subsection in place could lead to local authorities arguing that,

"a need arising from or related to a mental disorder",

was the requirement only to provide psychiatric, medical and follow-up services.

The statutory definition of aftercare services in the Bill is confusing because it separates out the needs arising from the person's mental disorder from the need to reduce the risk of deterioration in the person's condition and the risk of readmission to hospital. My noble friend's amendment would instead define aftercare services as those services that reduce the risk of deterioration in the person's mental condition and the likelihood of the person requiring readmission to hospital.

It is right that the definition of aftercare services focuses on reducing the likelihood of hospital readmission and does not lead to confusion or legal disputes about a local authority's role in this or what services should be provided under Section 117 of the Mental Health Act. It is also right that aftercare continues to be viewed as a comprehensive range of generic services across healthcare, social care and other services such as suitable accommodation and community support.

Amendment 128A is a compromise offered by my noble friend that I hope the Government will take up because, as he said, he would prefer to delete Clause 5 entirely, so that the current position in relation to Section 117 remains unchanged. Mind, the mental health and disability committee of the Law Society and the Mental Health Lawyers Association all consider that the best way to avoid confusion over the definition of aftercare is to remove Clause 71(5)(a) altogether.

[Baroness Wheeler]

I hope that the Minister will have some good news for my noble friend and for other Lords who, too, are very frustrated that the mental health aftercare issue has not been laid to rest in the way we thought it had under our discussions as far back as on the Health and Social Care Bill.

Earl Howe: My Lords, I first would like to echo the comments made by my noble friend Lady Northover during Committee, when she paid tribute to the excellent work of the noble Lord, Lord Patel of Bradford, in the mental health field.

I think we can all agree that setting out a definition of mental health aftercare in legislation is important. A clear legal definition will mean that the scope of aftercare will no longer be entirely open to interpretation by the courts, whose views have varied over time. The question is what that definition should be. As updated by government Amendments 129, 130 and 131, our proposed definition contains a carefully framed duty that reflects the Government's policy on the appropriate scope of the duty to provide free aftercare services for a very small group of patients who have been detained for treatment under certain sections of the Mental Health Act. It has carefully drawn limits because the Government do not consider that it would be appropriate for the Mental Health Act to impose a duty on local authorities to commission services that are based on needs which neither arise from, nor are related to, a mental disorder.

Therefore we believe that the amendment tabled by the noble Lord, Lord Patel of Bradford, goes too far and would create an inequity between this group of people and others with equivalent needs for care and support who are not eligible for free aftercare, either because they have been detained under other provisions of the Act or not detained at all. They will be means tested and will have to meet eligibility criteria for the social care part of their aftercare package, so may not receive any social care from the local authority. In addition, with an ageing population, local authorities will have to be able to differentiate "mental health aftercare" in order to know when the "aftercare" finishes and ongoing support for other reasons begins.

The noble Lord suggested that the case of Mwanza was not a stable basis for primary legislation. He said that it is, after all, only one case. There is a bit of a misunderstanding around this. The Mwanza case merely triggered a debate; the issue is whether the definition is a good idea and, if so, how it can most helpfully be drafted. The Government's definition of mental health aftercare services builds on the definition recommended by the Law Commission. The Government accepted the recommendation of the Law Commission as a sensible starting point, but we have gone further. We propose a wider definition than that suggested by the Law Commission, including that Section 117 services may relate to as well as just arise from the person's mental disorder, and that the aftercare should prevent deterioration as well as readmission to hospital.

Because our definition is more precise, I feel that it will be more helpful than the noble Lord's in ensuring that clinical commissioning groups, local health boards and both English and Welsh local authorities more easily agree on the aftercare services to be provided, so that these services can be put in place promptly.

I reassure the House that the definition we are now considering is the result of extensive consultation. In consequence, we have added a positive objective to prevent deterioration as well as preventing readmission to hospital, and have further changed the clause to remove the definite article when referring to "the mental disorder", for which the noble Lord made the case in Committee. This is intended to remove any doubt about our intention that the scope of aftercare covers more than just one form of mental disorder, and is not necessarily limited to the specific disorder or disorders for which a person was previously detained under the Act and which gave rise to the right to aftercare.

7.15 pm

We will also clarify these matters in revised Explanatory Notes for the Bill. Lawyers from Mental Health Alliance have told us that this would be of considerable value in resolving disputes at a local level. In addition, we will further explain these issues when we revise the Mental Health Act 1983 code of practice in 2014. We have given a commitment to work with all interested stakeholders when revising that.

My noble friend Lady Barker asked why we should rip up the legislation that has promoted joined-up care. We are not ripping up this section; we are making the scope of the duty clearer. We are not changing the joint duty to commission Section 117 services, nor are we trying to introduce charging.

I hope that with the number of clarifications made to the clause and the commitments I have given, I have assured the noble Lord, Lord Patel of Bradford, that the Government's position is the right one.

Baroness Masham of Ilton: My Lords, what will happen to the protection of the public from those who have schizophrenia?

Earl Howe: My Lords, the protection of the public is of great importance, as I need hardly say; but we are dealing here with quite a narrow point of definition about who should be entitled to free mental health aftercare. To expand the scope of that definition to include others would not be fair on many people, which is why I have argued that I believe we have positioned the definition in the right way. The noble Baroness's question is a very relevant one in the broader context of how we look after those with mental illness, but I would like to think that this amendment should not affect her concern one way or another.

Lord Patel of Bradford: My Lords, I am clearly disappointed at the response. I was expecting at least a halfway point at which we could meet and perhaps change the definition once again. I will not detain the House for very long. The noble Baroness, Lady Barker, very clearly and succinctly put the benefits of Section 117 and the joint working that takes place. That is probably the only piece of legislation that has encouraged joint working really well and has worked.

The noble Earl talked about the Government's definition, and that is what it is: a Department of Health definition. However, it does not ride with everybody else out there. Everybody that I have spoken to clearly says that this is the wrong way. I fear that the department has got itself in a corner because it has accepted the Law Commission's recommendation on this point. It did not accept the other three recommendations, which clearly shows, to me, that the Law Commission does not understand Section 117 services properly. Although the department has accepted this recommendation, I think it has realised that the basis on which it has done so is not appropriate; the case is unique and unrepresentative.

We have talked about inequity. These people have their liberty taken away: they are locked up against their will. They have been in and out of mental health services; they have had a raw deal. That is why they are there. This is a reciprocal duty on behalf of society to make sure that we give them free aftercare services. Yes, other patients may not get that, but this group of patients is extremely vulnerable. There is also the issue of public safety. We should give them the services they require.

I could go on, but I will not. I am really disappointed. This matter deserves that the House makes its views known, so I want to test the opinion of the House.

7.19 pm

Division on Amendment 128A

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Amendment 128A disagreed.

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7.31 pm

Amendments 129 to 134

Moved by ***Earl Howe***

129: Clause 71, page 59, line 35, after "services"" insert ", in relation to a person,"

130: Clause 71, page 59, line 37, leave out "mental disorder of the person concerned" and insert "person's mental disorder"

131: Clause 71, page 59, line 41, leave out "the" and insert "mental"

132: Clause 71, page 60, line 28, after "purpose" insert "Part 1 of"

133: Clause 71, page 60, line 29, at end insert—

"(7A) In section 37 of the Social Services and Well-being (Wales) Act 2013 (direct payments: further provision), at the end insert—

"(11) The ways in which a local authority may discharge its duty under section 117 of the Mental Health Act 1983 include by making direct payments; and for that purpose Schedule A1 (which includes modifications of sections 34 and 35 and this section) has effect."

(7B) Before Schedule 1 to that Act insert the Schedule A1 contained in Part 2 of Schedule 4 to this Act.

(7C) In section 163 of that Act (ordinary residence), after subsection (4) insert—

"(4A) A person who is being provided with accommodation under section 117 of the Mental Health Act 1983 (after-care) is to be treated for the purposes of this Act as ordinarily resident in the area of the local authority, or the local authority in England, on which the duty to provide that person with services under that section is imposed."

(7D) In consequence of subsections (7) to (7B), in subsection (2C) of section 117 of the Mental Health Act 1983—

(a) in paragraph (a), for "regulations under section 57 of the Health and Social Care Act 2001 or" substitute "—

(i) sections 31 to 33 of the Care Act 2013 (as applied by Schedule 4 to that Act),

(ii) sections 34, 35 and 37 of the Social Services and Well-being (Wales) Act 2013 (as applied by Schedule A1 to that Act), or

(iii) regulations under",

(b) in paragraph (b), after "apart from" insert "those sections (as so applied) or"."

134: Clause 71, page 60, line 33, at end insert—

"( ) In section 145 of the Mental Health Act 1983 (interpretation), for the definition of "local social services authority" substitute—

""local social services authority" means—

(a) an authority in England which is a local authority for the purposes of Part 1 of the Care Act 2013, or

(b) an authority in Wales which is a local authority for the purposes of the Social Services and Well-being (Wales) Act 2013.""

Amendments 129 to 134 agreed.

Schedule 4: After-care under the Mental Health Act 1983: direct payments

Amendments 135 and 136

Moved by ***Earl Howe***

135: Schedule 4, page 111, line 13, leave out paragraph 2

136: Schedule 4, page 111, line 21, at end insert—

"Part 2

Provision to be inserted in Social Services and Well-Being (Wales) Act 2013

Schedule A1

Direct payments: after-care under the Mental Health Act 1983

General

1 Sections 34 (direct payments to meet an adult's needs), 35 (direct payments to meet a child's needs) and 37 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.

Modifications to section 34

2 For subsection (1) of section 34 substitute—

"((1)) Regulations may require or allow a local authority to make payments to an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section."

3 In subsection (3) of that section—

(a) in paragraph (a), for "who has needs for care and support ("A")" substitute "in respect of the provision to the adult ("A") of after-care services under section 117 of the Mental Health Act 1983", and

(b) in paragraph (c)(i), for "of meeting A's needs" substitute "of discharging its duty towards A under section 117 of the Mental Health Act 1983".

4 In subsection (4) of that section—

(a) in paragraph (a), for "who has needs for care and support ("A")" substitute "to whom section 117 of the Mental Health Act 1983 applies ("A")", and

(b) in paragraph (d)(i), for "meeting A's needs" substitute "discharging its duty towards A under section 117 of the Mental Health Act 1983".

5 In subsection (5) of that section—

(a) in paragraph (a), for "A's needs for care and support" substitute "the provision to A of after-care services under section 117 of the Mental Health Act 1983", and

(b) in paragraph (b), for "towards the cost of meeting A's needs for care and support" substitute "equivalent to the cost of providing or arranging the provision to A of after-care services under section 117 of the Mental Health Act 1983".

6 In subsection (6)(b) of that section, for "A's needs for care and support" substitute "the provision to A of after-care services under section 117 of the Mental Health Act 1983".

Modifications to section 35

7 For subsection (1) of section 35 substitute—

"((1)) Regulations may require or allow a local authority to make payments to a person in respect of a child to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for the child under that section."

8 In subsection (3)(a), (b) and (c) of that section, for "who has needs for care and support" (in each place it occurs) substitute "to whom section 117 of the Mental Health Act 1983 applies".

9 In subsection (5)(a) of that section, for "meeting the child's needs" substitute "discharging its duty towards the child under section 117 of the Mental Health Act 1983".

Modifications to section 37

10 In subsection (1) of section 37—

(a) in the opening words, for "34, 35 and 36" substitute "34 and 35",

(b) omit paragraphs (a), (b) and (c),

(c) in paragraph (i), for "a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced" substitute "a local authority's duty under section 117 of the Mental Health Act 1983 (after-care) is discharged", and

(d) in paragraph (k), for "34 to 36" substitute "34 and 35".

11 Omit subsections (2) to (8) of that section.

12 After subsection (8) of that section insert—

"((8A)) Regulations under sections 34 and 35 must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after-care) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs."

13 In subsection (9) of that section—

(a) for ", 35 or 36" substitute "or 35", and

(b) for "care and support" substitute "after-care services".

14 In subsection (10) of that section, for "care and support to meet needs" substitute "after-care services"."""

Amendments 135 and 136 agreed.

Consideration on Report adjourned until not before 8.32 pm.

Probation Service

Question for Short Debate

7.32 pm

Asked by ***Lord Marks of Henley-on-Thames***

To ask Her Majesty's Government what is their assessment of the impact of the proposed provisions for the supervision of offenders by the private and voluntary sectors after the proposed reorganisation of the probation service.

Lord Marks of Henley-on-Thames (LD): My Lords, the probation service is facing fundamental changes, yet during the passage of the Offender Rehabilitation Bill through this House, there was very little chance to debate these changes in any depth. The central issue I wish to explore in this debate is how far, when these changes are made, can we maintain and even improve the quality of probation services for the rehabilitation of offenders?

That issue raises a number of questions. First, can we retain our existing probation officers within the new structure when the bulk of the service is in private ownership? Secondly, how do we maintain the standards, morale and ethos of the probation service? Thirdly, how can we maintain the high quality recruitment and training in the future? Fourthly, will the new structure deliver the promised new services we all want to see: the through-the-gate supervision, and supervision for offenders on release from short sentences? Fifthly, will the reorganisation genuinely lead to more diversity, more innovation, and better results or are we heading, as some fear, for low-cost uniformity, led by commercial

[Lord Marks of Henley-on-Thames]
organisations with bad records of failure which will be of no long-term benefit? Finally, will payment by results actually deliver results or will the targets be either too hard to reach to make them worth aiming for or insufficiently challenging so that they make no difference?

It might help if I set out my understanding of how the proposals stand now. On 1 April next year the probation service is to be split. The existing 35 probation trusts will be wound up, the new National Probation Service will be charged with looking after offenders classified as high risk, with providing advice to courts, with conducting the risk assessment of new clients and with handling cases of breach. They will have a clear responsibility for public protection. The NPS will look after 20% of the probation trusts' current case load, while 21 new community rehabilitation companies will take over the remaining case load. It is intended that existing staff will be reassigned between the NPS and the CRCs.

Initially, each of the CRCs will be wholly owned by the Ministry of Justice. They will cover England and Wales split into areas and each will be charged with delivering the relevant orders of the court in its own area, including community payback, unpaid work, curfews and drug rehabilitation. The CRCs will generally be located in the same premises as the NPS and, initially at least, those will be the existing probation trust buildings.

Starting in late 2014, the intention is that the CRCs will be taken over by the successful bidders in the competition which is being organised. The bids will be judged on which provide the best package within what the department calls an affordability envelope. So there is a slightly uncomfortable compromise between competition on price, which risks reducing quality, and competition on quality. However, in this area, of course, an objective comparison of quality is very difficult because bidders are expected to propose a range of different ways of delivering the orders of the court.

In the first stage, following 1 April, the probation services will look to their clients and to the public much like the services provided by the existing probation trusts; the same staff doing much the same work in the same premises, though with some change in the allocation of work. However, after the new contracts are let, the shape of the probation services is going to be much more difficult to predict. The new through-the-gate resettlement and supervision following short sentences will only be implemented at this second stage, so the CRCs' contractual obligations will then have to change. What other changes will there be in the obligations of the CRCs under their new ownership and will they vary from one CRC to the next?

These substantial changes take place against a background of considerable success for the probation trusts. Reoffending rates have been steadily falling for all offenders apart from those serving short prison sentences and they, to date, have had no contact with the probation service anyway. The trusts' performance has generally been rated by the Ministry of Justice as good or excellent. The Merseyside Trust was last year the first public sector winner of the British Quality Foundation's UK Excellence Award. All this has been achieved within a falling budget. It is therefore unsurprising that there is some bewilderment among the probation services as to why they need such reorganisation at all.

Against that background, I turn to my first question on the retention of existing probation officers. We currently have a highly professional, skilled and committed body of probation officers who are an asset of great value, impossible to price but once lost very difficult to replace. My concern is how far the new owners of the CRCs will in the medium and long term retain the staff they take over. Will they be required by their contracts to involve qualified probation officers in the delivery of their services?

My second question concerning the standards, morale and ethos of the probation service is closely linked. My concern is not for the new NPS. Indeed, as a national service, the NPS may develop more influence within the criminal justice system than could the individual probation trusts. However, how far will standards be safe under the umbrella of the new providers? Who are they likely to be? What mix will there be between commercial and voluntary sectors? What role will there be for mutuals? How will performance be monitored, and will that monitoring be effective?

My third question concerned recruitment and training. In relation to all these questions so far, one hopeful development is the proposed establishment by the Probation Association and the Probation Chiefs Association, with government approval, of an institute to be known as the "Probation Institute". Such an institute could offer accreditation of courses and qualifications. It could maintain a register of qualified probation officers, and could ultimately take on the role of monitoring and enforcing professional performance standards. That would assist providers when recruiting, and probation officers when seeking new employment. The institute could also act as an information exchange on innovation and best practice and would be a valuable resource if it did so. The proposed institute might one day apply for charter status, and would establish probation officers as a strong and independent profession. In a world of diverse new providers, this would be a significant benefit.

My fourth question concerned the delivery of the new services. How confident are the Government that satisfactory bidders will commit to supplying through-the-gate resettlement and the extra supervision, within the same overall price package as we pay for current services? If the bidders do not emerge, the CRCs will stay with the Ministry of Justice and the reorganisation will have failed to achieve its object.

My fifth question was on diversity of provision. Will we genuinely secure more voluntary sector involvement—more local partnerships between smaller local organisations and the main contractors? Will we secure the special arrangements we need and which have been promised for women and young offenders? Finally, will payment by results lead to improved reoffending rates? Was the Social Market Foundation right or wrong to conclude, as it did in its report this summer, that the extra payments would not make it worth while for providers to pay the extra money to

improve the service? Will the payment by results provisions affect the prospect of more partnerships, even if main contractors cannot pass on the risk—as they should not be able to do—to their smaller providers?

I am not opposed to these reforms in principle. If they go well, they could lead to more diversity, to more imaginative and effective rehabilitation, to the provision of the new services, to lower reoffending rates, and to the prospect of fewer people in prison, with improved lives and substantial savings of public funds. However, I am concerned that there are many pitfalls on the road to these desirable outcomes. Perhaps some further time might be desirable for the transfer to private ownership. I look forward to hearing other contributions to this debate and to the response from my noble friend the Minister.

7.43 pm

Lord Judd (Lab): My Lords, the noble Lord, Lord Marks of Henley-on-Thames, deserves to be congratulated, not only on having secured the debate this evening but on the masterful way in which he introduced the subject. I found myself in great sympathy with the points he made.

I confess to the House that I feel very sad. If I was asked to pick an exemplary area of effective public service in British social history, I would pick the probation service. It has dedicated people of quality; people of education, training and practical experience. They do not just run a system or prove themselves as efficient in economic terms, but they have a mission to relate to the individuals, the young men, women and children —and not only young—who are their responsibility, and to work with them as individuals, trying to enable them to become productive. Rehabilitation is a sort of artificial word—it does not get to the human centre of all this. They enable these people to become constructive members of society, to feel that they belong to society, and to grow in confidence. I see that all that is in jeopardy because of a preoccupation with change—as far as I can see, almost for the sake of change.

Look at what has happened in recent years. We have seen reoffending down and the 35 probation trusts in England and Wales have been described as being good or exceptional. Why change a situation that is going so well? We have also seen—this is crucial—that reoffending has been coming down. The latest set of statistics published by the Ministry of Justice shows that for everyone under probation supervision, the probation service will reduce reoffending by 5%. The fall in reoffending has been even higher: when the figures for those serving community sentences are separated from those released from custody, there has been a 6% reduction for those serving community sentences. This is positive; it is not dramatic but is steady progress, which matters in this area. It is about working with people as people, not dramatic schemes against artificial targets.

I am sure that all of us commend the work of the Howard League. I was very struck by a paper it prepared for this debate which posed certain questions that we ought to take very seriously. The league says that in the context of this being a huge change to our justice system:

"Risk is key to the Transforming Rehabilitation proposals—who will supervise people under sentence will be determined by their risk level, with high risk cases remaining in the public sector and all low and medium risk cases (the vast majority) being transferred to private providers. Despite the central importance of risk levels to the proposals a risk assessment … is yet to be published, or possibly even developed. Furthermore"—

and the noble Lord referred to this—

"probation officers are currently being asked whether they would prefer to stay in the public sector or move to one of the 21 'Crime reduction companies' … but they are not being provided with any information with which to make this decision. Probation officers do not know who their employers will be … what they will carry out or what the terms and conditions … will be. It is unacceptable to put forward radical plans that are central to public safety with so little detail about how it will work and how it will affect the people involved".

I have another concern which I will share with the House. I have spent a great deal of my life in the voluntary sector. I was a director of Oxfam, which is quite a significant organisation. I am sure that if these proposals go ahead, a lot of voluntary organisations will have a great contribution to make. They will bring a great deal of sensitivity and commitment. However, I am anxious. Why? The real centre of purpose in the voluntary sector should be experimentation. It should be about becoming a catalyst for society as a whole, about vision and new approaches. Increasingly, the voluntary sector is being asked to become an extension of the public sector—subcontracting to get the work done more cheaply than it would be done under existing arrangements is usually a governing factor. That is the objective; rather like privatisation, we shall have to wait and see whether it will work out like that.

I am concerned that all this may be affecting the historical culture and ethos of the voluntary sector. It may be becoming a subcontracting culture as distinct from an innovative, imaginative, visionary, sensitive, dynamic purpose-challenging society with new experiences. I think of a very practical example. I have referred to my experience at Oxfam and other organisations in the voluntary sector, and I had for nine years the joy of being national president of YMCA England and Wales. I became particularly struck by the work the YMCA was doing with young offenders. I remember going to a young offender institution where it had won a contract to work. This, of course, was under the previous Government; I am not disguising that reality—it is a fact. The contract was to get young people into jobs—into work. It was judged by the Home Office in terms of how successful it was in getting those results against targets. What the team was discovering, as sensitive, imaginative people, was that some of those with whom it worked were not ready to go into a job straight away. They needed a lot more support and preparation for making a success of their life. To get them into a job straight away might be a recipe for disaster.

The YMCA therefore began to do more work on this area because it thought that it was its responsibility. It was told in no uncertain terms to stop doing that because, if it did not meet the targets on getting people into jobs, it would lose the contract to somebody else. This is the sort of problem I see ahead. These are the practical problems of the front line. I would like to hear much more reassurance from the Government on this.

I finish as I started: I think it is a word that can be used too loosely, but I genuinely feel we are at a tragic stage. We are about to tear up and remove something

[LORD JUDD]
with a tremendous sense of purpose, of loyalty and of contribution to society, but above all of contribution to the individuals with whom they are working, for a system unproven with so many questions still unresolved. I do not understand why we are making this leap into something which is far from proven as a sensible way forward.

7.52 pm

Baroness Linklater of Butterstone (LD): My Lords, I am grateful for the opportunity this debate gives us to look at the work of the probation service today and examine its value in the context of the changes the Government want to make, the implications for its future and, equally important, the future of its clients.

I declare an interest that I was a patron of the Probation Boards Association in 2005, when I joined the noble and learned Lord, Lord Woolf, and I have had connections with the service for many years.

Since its origins more than 100 years ago, the probation service has developed into the national provision for people in trouble with the law at the interface between offenders and the courts, prison, community provision and the public. It represents the bedrock of the system by which we manage offenders in this country in conjunction with the myriad agencies—statutory, voluntary and private—which work to keep our society safe. It is a highly professional service with a hinterland of skills, knowledge and experience which is second to none and on which we all depend when dealing with offender management.

All the performance indicators show that the service is doing well. The MoJ rating system shows that targets have been reached with performance ratings of "good" or "excellent", and just two years ago the service became the first public sector organisation to be awarded the British Quality Foundation's Gold Medal for Excellence in recognition of

"outstanding and continued commitment to sustained excellence over a number of years",

an achievement of which they—and we—should be proud.

We know that the cost of the service is considerable, as one would expect of a national public service. Indeed, the MoJ budget is second only to the costs of the Prison Service, and cuts are inevitably constantly sought by the Government, particularly in these times of recession. Savings of 20% have been found between 2008-9 and 2012-13, while the budget also fell by 19%, but costs are a persistent issue as they are in all the social services. What also matters, however, is the quality and professionalism of the service, which is dealing, in the community, with some of the most damaged, difficult, vulnerable and often dangerous members of our society. This requires skill and experience that comes only with time. It also depends on relationships with the police and on "integrated offender management" with a host of other colleagues in the social services world, health, education, employment and so on.

It is worth reminding the House that, in the recent past, prison numbers have been dropping. Last year there was a 5% decrease in those being sentenced on the year before, and the prison population itself fell in the past 12 months for the first time since 1999. Recorded levels of crime are at their lowest for 30 years, and youth crime is down 47%. This illustrates the effectiveness and significance of probation in helping to keep people out of prison, by managing them in the community, where they are less likely to reoffend, at a fraction of the cost of imprisonment. Where the figures go the other way relates to those 50,000 minor, persistent offenders, of whom 57% reoffend, serving a year or less in prison. Until now this group has never had any statutory probation support; hence the high reoffending rate which the Minister now wants to include.

In the light of the probation service's performance and background, it beggars belief that the Minister, Chris Grayling, should be contemplating handing over 80% of the probation service's work to an almost untried and untested system of payment by results, which is still being assessed, to be administered by 21 crime reduction companies (CRCs) with no earthly idea of what the outcomes are likely to be. Probation officers will still have a guaranteed job for the first year up to 1 April 2015, when the scheme goes live, when their jobs will be "sold to the market". There is no indication of what the workforce will consist of, except possibly most of those redundant probation officers. Their task will be to manage the 150,000 offenders that probation currently manages in the community each year—excluding the high-risk offenders—and at the same time to provide a year's support to the 50,000 additional group of low-level offenders that the Minister now wants to be supervised for the first time. It is of course an admirable aim to have additional support for this group, and it could be of great benefit to offenders and public alike, but only if there is the skilled supervision available in appropriate numbers. The Minister's solution of handing over the whole task to the new private sector, divided into 21 community rehabilitation companies, in contract package areas and overseen by six divisional heads, is what is being announced. Beyond this there is absolutely no indication where the staff on the ground are going to come from, who they will be, let alone what experience and skill sets these newcomers will have. I understand that this information comes under the heading of "commercial confidentiality".

We know, however, that the 20% of current probation service staff who will be left will be required to manage all the high-risk, most challenging offenders, who will be assigned to them. Here their skills are recognised. This is very important and welcome. They will also have responsibility for bringing back all breach cases to the courts for review and sentence.

Risk management is part of probation's professional work. It is a delicate skill, and the assessment and allocation of risk is inevitably subject to change. Of course, with professional help, people come off the risk register, but they can also fluctuate, which raises the question of whether each time offenders become low risk they will be transferred to a CRC and will then have to be reassigned again if circumstances change once more—as well they might. This is another "detail" of some significance, because continuity of offender management, as anybody in the business knows, is of extreme importance. However, how these issues will be expected to be dealt with remains unclear—as

does whether people will be shifted between CRCs and probation depending on their assessed level of risk. What is clear is that the division of management between low and medium-risk, and high-risk, offenders means that the service will inevitably be fragmented, thus compromising accountability and effective community support. 1 would be grateful for the Minister's comments on this.

The additional cohort of 50,000 offenders will be required to remain on supervision for a whole year, regardless of the length of the short sentence served or the nature of the offence. For example, it could be a two or three-month sentence for a driving offence. How appropriate is a year's supervision for that?

Apart from issues of staff training and experience, there are considerable risks in the management of a whole year's supervision. Offenders and professionals are likely to find a year disproportionate, which will make compliance very difficult and almost inevitably will increase the risk of breach by this group.

It is estimated by the Government that around 13,000 offenders each year will be recalled or will breach their conditions and end up in prison again, because for many a year is inappropriate and too long. It is not clear how the CRCs will manage this potentially enormous addition to their workload, and it will increase the prison population by an estimated 600 people. This in turn will impact on current prison management, which is simultaneously dealing with unprecedented cuts on the one hand and the reorganisation of resettlement prisons on the other. Resettlement is another big issue because it has already resulted, inevitably, in the mixing of young people, who are often vulnerable, with adults. This is highly undesirable and destabilising to the normal allocation of prisoners, which is an important part of prison life. It has already led to increased violence and drug use in HMP/YOI Portland, as reported by the IMB, and to a 50% increase in self-harm among young people within a year of mixing with adult prisoners.

I regret that the Government have not wanted to take more time and have not tried out the ideas in some pilot areas, for example. Instead, everyone in the service is now working to ever-tighter deadlines as the goal posts shift. Probation trust chairs are finding the time for transition impossibly short to plan for proper delivery of services, which will be damaging to both future performance and public protection.

Lord Gardiner of Kimble (Con): My Lords, I hope that my noble friend will forgive me for pointing out that there is a time limit of 10 minutes for each speaker, and that we have a speaker in the gap.

Baroness Linklater of Butterstone: I am sorry; I will wind up. I have had letters from professionals who are really worried about this. There is a blank wall of information about how they are to plan and budget beyond next April.

It is surely important to get this right and to reach greater levels of clarity. It is too big a project to be allowed to fail, when excellence should be the goal. The focus of our exercise should be the most vulnerable and difficult in our community.

8.05 pm

Lord Ponsonby of Shulbrede (Lab): My Lords, I rise to speak in the gap. I will make one central point and ask the Minister two questions.

When we were dealing with the Offender Rehabilitation Bill, I visited a number of very senior professionals in the probation service. From a management point of view, they made one central point to me. It is a point that the noble Baroness, Lady Linklater, made, but I think that it is worth expanding on it after what they said to me. Currently, the probation trusts arrange their management in multi-expert groups of different levels of experience and expertise. The reason is that they can provide continuity of access to, and supervision of, the offenders they are now looking after. The point that was made very forcefully to me by senior probation trust managers was that they experience problems when offenders move between different institutions. Whether the move is from prison into the community or from one place in the community to a different address that is under the supervision of a different probation trust, there is always a dropout of people breaching conditions or not maintaining contact with probation officers.

The point that was made to me—which the noble Baroness, Lady Linklater, made—is that built into the proposed new system is the certainty that there will be more changes between institutions. You will be moving from the National Probation Service, which will make the initial assessment, to a private provider that will then run the supervision for whatever the period is. Then, if there is a breach or a change in circumstances—for example, if the offender starts taking drugs again—they will go back to the National Probation Service for a reassessment. Perhaps there will be a reassignment or perhaps they will go back to court. The point that the managers made to me was that with every transfer you get dropout, which builds inefficiency into the system. Therefore, my first question to the noble Lord, Lord Ahmad, is: has this point been addressed in the contracts that are being bid for? It is the central point that was made to me by senior probation trust managers.

My second question is about the Through the Gates pilots that I understand are currently being run. When will the results of these pilots be available? From what I have heard in unofficial gossip, if one may put it like that, a number of these pilots have been inadequately resourced and inadequately managed. Therefore, the results may be worse than the Government had hoped for. If this is the case, it would be a shame, because I for one think that the model of providing through-the-gate provision, perhaps with somebody who has experience of coming out of prison helping with supervision, is a good one. However, it needs to be properly supported and funded for it to work.

I close by thanking the noble Lord, Lord Marks, for tabling this debate. It is an important one. I cannot resist saying to both noble Lords opposite that there were plenty of opportunities to vote against the provisions of the Offender Rehabilitation Bill, and I am only sorry that they did not take advantage of them.

8.10 pm

Lord Beecham (Lab): My Lords, I am sure that your Lordships would wish to join me in wishing the Minister a happy Eid. I daresay that it would be happier if he did not have to take his place in the Chamber tonight and answer for the Government in this debate.

It is customary to thank the Member who secured a debate of this kind, and I do so willingly. The noble Lord, Lord Marks, followed me to my Oxford college some eight years after I graduated. Unfortunately, as my noble friend has pointed out, he did not follow me into the Lobbies when we debated the future of the probation service and voted on the amendments to the Offender Rehabilitation Bill tabled and moved by the noble Lord, Lord Ramsbotham, who cannot be in his place tonight, and by me. Had we not taken that step this would have been the first time that the House had an opportunity to discuss the massive changes that the Government seek to impose on a crucial and, as we have heard, high-performing public service. Members will recall that the Bill contained no reference to probation, and that the leaked risk assessment on the Bill disgracefully declared it had been,

"kept slim to minimise the dependence of the reforms on the passing of the legislation".

Your Lordships' House passed a crucial amendment to the Bill requiring proposals to reorganise the probation service to be subject to parliamentary approval. The Government have yet to indicate even when the Bill will receive its Second Reading in the House of Commons. Perhaps the Minister could enlighten us as to when that is likely to occur. In the mean time, the Government have displayed their contempt for the views of this House by embarking on yet another bout of pre-emption, or as I have described it in respect of other matters, pre-legislative implementation of the kind roundly criticised by the Constitution Committee, by pressing ahead with arrangements to dismember the service and put 70% of its work out to contract, for which incidentally the existing service will not be allowed to tender. OJEC procedures have been initiated and a strange document entitled, *Target Operating Manual*—its initials presumably being derived from the noble Lord, Lord McNally—has been published.

This document sets out a complex structure analogous to the confusing and expensive shambles that was imposed on the National Health Service. Local probation trusts disappear to be replaced by a national service responsible for high-risk offenders while private companies supervise medium and low-risk offenders, including those released after serving sentences of 12 months or less. Yet the paper continues to be vague about the system of payment by results saying only that,

"a proportion of their payment will be at risk and dependent on their performance",

while failing to establish the basis on which that will be measured, or indeed what proportion might be involved.

There are serious concerns about the largely undefined categories of risk between which some 25% to 30% of offenders move. The National Probation Service is supposed to assume responsibility for those moving from the lower categories to high risk. The document states this will follow the deployment of an "actuarial tool" combined with a "clinical judgment of risk". Can the Minister explain what those terms actually mean? It goes on to establish a hierarchy of officers—a responsible officer, a supervising officer and a supervisor, all with different roles, piling complexity upon confusion and fragmentation. The model refers to the involvement of police and crime commissioners in the new arrangements, but not local authorities, clinical commissioning groups or NHS England, which has responsibility for commissioning primary care and mental health services, both highly relevant to the issue.

There will be £450 million worth of contracts offered to, among others, the likes of Group 4 and Serco, who gave us the Olympics fiasco, the tagging scandal, Oakwood prison and, as we have heard in the past few days, the transport to prison of male and female prisoners in the same van—but then this is the Secretary of State responsible for the lamentable failure of the Work Programme. No doubt he would be happy to see such organisations take over the entire system from policing to the court service, and from probation to prisons. As Caliban might have said:

"Oh brave new world that has such providers in it".

The Government claim that the programmes will involve no extra expenditure despite estimating that it will result in some 200,000 coming under its auspices, 60,000 of whom are likely to be recalled into custody and, as the noble Baroness, Lady Linklater, pointed out, on the Government's own figures 13,000 will receive short sentences as a result of the reforms who would not otherwise have done so. What is the basis for this improbable assertion in relation to overall costs? Payment by results has not been piloted—or at least not properly piloted, since the Government terminated the relevant pilots prematurely. The noble Lord, Lord McNally, admitted in debate on Report that formal evaluations were not available because the pilots were discontinued, but claimed that the Government had,

"learnt from the process of designing the pilots"—

I emphasise the word "designing" and were,

"applying that learning process to the design of the new system".—[*Official Report,* 25/6/13; col.681.]

Can the Minister tell us precisely what was learnt from the process of designing, but also, importantly, how the Government propose to implement the design that emerged from the short-lived pilots? For that matter can he explain the logic of including in the new regime offenders who may have served as little as one day of a custodial sentence? I repeat some of the questions that I raised on Report, to which no answer was given. In relation to payment by results, what performance indicators will be used to measure service delivery? How will the Ministry of Justice decide to deduct—and on what basis—a proportion of the fee for underperformance? What weight will be given to the nature of any reoffending? Will a motoring offence count the same as a burglary or crime of violence? How long is the period in which reoffending occurs to be measured? The Minister's letter on the subject suggested 12 months—surely too short.

What of the questions raised by the Chief Inspector of Probation, which also went unanswered in the debate? Was she right to suggest that,

"only a small part of the contract price can be genuinely dependent on a reoffending measure",

or that,

"victim contact services should remain within the public sector probation service"?

What does the Minister say to her charge that the,

"current proposals for the management of risk cannot be judged as workable"?

Have they been modified; if so how, and with whom have they been discussed?

How do the Government respond to the chief inspector's concerns that more full pre-sentence reports will be needed where cases are to be referred to contractors, that small local voluntary organisations will be squeezed out once they have been discarded as bid candy, and that national commissioning,

"could be at the expense of the local perspective and the good working relations at the moment between probation trusts and local partners"?

Does the Minister stand by the airy dismissal of the noble Lord, Lord McNally, of the leaked risk assessment which estimates a 51% to 80% risk that predicted cost savings will not be met? Finally, what is the Minister's estimate of the number of probation officers who will lose their jobs as 70% of their work is transferred? Does he agree that the figure of 18,000 which has been mentioned is about right? If staff do transfer to contractors, will TUPE provisions apply?

The Government's objective—the reduction of reoffending—is right. Their proposals, however, are complex, confusing, uncosted and potentially risky. They should be properly piloted with probation trusts being allowed to tender for the work for which they have a deservedly high reputation, as we have heard tonight. I thank all those who have contributed to this debate. If the Government railroad through their ill thought-out plans—in a sort of HS2 of the criminal justice world—it will be because they put ideology before criminology in an area where public safety should be paramount.

8.18 pm

Lord Ahmad of Wimbledon (Con): My Lords, first, I return the greeting from the noble Lord, Lord Beecham, who wished me a happy Eid. It is traditional to say khair mubarak to all. Indeed, my Eid celebrations are, of course, reaching a culmination in being with your Lordships this evening.

I take this opportunity to thank my noble friend Lord Marks for giving the House the opportunity to debate this important subject. I know that both he and my noble friend Lady Linklater recently discussed the reforms with senior officials responsible for the rehabilitation programme, and I am grateful for their continued interest in the reforms. I also take this opportunity to thank all other noble Lords who have contributed, including the noble Lords, Lord Judd and Lord Beecham. I was somewhat surprised when I saw the initial list and the omission of the noble Lord, Lord Ponsonby. I am glad that he resumed his place here. His thoughtful contributions are always welcome to a debate of this importance. The debate is of course a timely opportunity for your Lordships to reflect again on the Government's reforms.

On 19 September, we published details of how the new model for supervision of offenders will work, alongside the launch of the competition to find future providers of rehabilitation services. Questions have been raised, and the noble Lord, Lord Judd, asked the obvious question of "why?". The Government's position is that these reforms are vital if we are to break the depressing cycle of reoffending. At the moment, nearly half of all offenders released from our prisons offend again within a year. I will look at a couple of reoffending figures—my noble friend Lady Linklater referred to one of them—almost 60% of prisoners released from under 12 months of custody go on to reoffend. That is a statistic that we cannot ignore. Equally, there is the cost of reoffending. The National Audit Office, back in 2010, estimated that the crimes committed by recent ex-prisoners cost anything between £9.5 billion and £13 billion to the economy. Notwithstanding some of the information about the probation service and its success, which I will come to in a moment or two, these provide valid reasons why it is important we also address the issue of reoffending, particularly among those serving sentences of under a year, which has not yet been addressed.

Legislating to provide that virtually all offenders released from custody will be subject to supervision is just one important aspect and benefit of our overall package of Transforming Rehabilitation reforms. The noble Lord, Lord Judd, asked why we need to change when probation trusts are performing so well. Under the current system, the most prolific group of reoffenders are those released form short custodial sentences. They receive no statutory rehabilitation support. Trusts currently do not have the opportunity to work with them, and we believe that our reforms will go towards addressing that particular issue. We need to stop offenders passing through the system again and again, creating more victims and damaging communities, and we need to have a system that is sustainable given our current financial constraints. That is, in essence, what is behind our reforms.

The noble Lord, Lord Marks, and the noble Lord, Lord Ponsonby, mentioned Through the Gate. In response, I will start with the impact of the reforms. First, there is the support that prisoners will get through the gate from custody into the community. This is an important reform. Providers will offer a resettlement service for all offenders in custody before their release. That may include support in finding accommodation, family support, mentoring and financial advice. I share the sentiment expressed by the noble Lord, Lord Judd. We want to ensure that every citizen of this country, if they commit a crime, is given an opportunity to reform but also to then become a productive citizen and contribute to the economy of our country. The services in custody will be underpinned by changes to the way the prison estate is organised. Through new resettlement prisons, in most cases, the same offender manager will work with offenders in custody and continue their rehabilitation work in the community. That continuity is very important.

The noble Lord, Lord Ponsonby, talked about particular pilots and issues that have been raised about them. I suggest that we could have a further discussion, either through a meeting, or by correspondence, which I will of course share with other noble Lords.

I turn to the voluntary sector. The noble Lord, Lord Judd, raised this particularly important point. Its expertise is part and parcel of what we are seeking

[Lord Ahmad of Wimbledon]
to integrate into the reforms. We are creating a much greater level of opportunity for voluntary and community sector organisations to play a role in rehabilitating offenders. I do not quite share the sentiment that they are there just for experimentation—they are there for their expertise. They are often best placed to tackle the issues that lead offenders back to crime, whether that is substance misuse, homelessness or a lack of training and education. They are often best placed to work with particular groups with complex needs; for example, many female offenders. I have seen during visits to different prisons—I have often cited Peterborough prison—where voluntary organisations such as the St Giles Trust play a vital role in the rehabilitation of prisoners.

The Government are committed to ensuring that the market is not simply cornered by the big players. In July, the Ministry of Justice awarded £150,000 to AVECO to deliver a series of skills and information workshops aimed at supporting the voluntary sector and mutuals to compete for contracts and deliver services to cut reoffending. As part of the rehabilitation competition, we are also running a registration process for smaller providers in order to maximise, as far as possible, the opportunities for them to be involved. We want to draw on the best services that can be offered by practitioners across the public, private and voluntary sectors. I say that to underline the driving force behind these reforms. They are about improving the support we give to offenders to turn away from crime. We will be judging potential bidders on the quality of the service they offer, not just on price.

I turn to probation professionals and staff. All noble Lords, I believe, referred to this, including my noble friend Lord Marks in his opening remarks. The Government's position remains that we cannot deliver these improvements unless we retain the skills and expertise of probation professionals as we move into the new system. Their excellence is not something to be ignored. I have the very greatest respect and admiration for the work that our probation officers do and am sure that the sentiment echoes across the Chamber. They play a fundamental role in protecting the public and helping offenders reintegrate into society. We do not want to lose their expertise. That is why the national framework for the transfer of staff to the new system gives an absolute commitment to fair processes and protection for staff within the system, including: a guarantee of employment for all probation staff employed by a probation trust on 31 March 2014, in either the appropriate community rehabilitation company or the National Probation Service; protection of current terms and conditions at the point of transfer; and no compulsory redundancies.

My noble friend Lady Linklater talked about 20% of probation staff going to the NPS. The proportion of staff who will actually move to the National Probation Service, or community rehabilitation companies, is still being finalised. There is certainly no set target of 20%. It will be the proportion needed to effectively manage the appropriate service. Alongside that, we will place contractual requirements on community rehabilitation companies to have and maintain a workforce with appropriate levels of training and competence throughout the life of their contracts.

I turn to some of the other questions. The noble Lord, Lord Ponsonby, asked about the disruption caused by offenders moving. There will be 21 CRCs, which will cover larger areas. The Bill also makes sure that offenders subject to community orders do not move residence where such a move will hinder the offender's rehabilitation. That is a very important point.

My noble friend Lord Marks also mentioned the idea of some kind of chartered institute of probation officers. I assure all noble Lords that this is an idea that the Government are taking forward and looking at seriously. We are working with interested parties across the board to develop a proposal for a Probation Institute that would promote the development of innovation and the sharing of good practice in the new system.

Payment by results and performance management were mentioned by several noble Lords. Community rehabilitation companies will be incentivised, through payment by results, to strive to reduce reoffending. In May this year, we published a detailed "straw man" proposal for the payment mechanism. We want to ensure that providers are incentivised to work with all offenders, including the most prolific, and have proposed important safeguards. We continue to test and refine this particular model. We will also put in place a clear performance framework to ensure that community rehabilitation companies meet the standards required of them in managing their cases and delivering the sentences of the courts. The system will be regulated through a combination of robust contract management, audit and independent inspections by the probation services.

I turn to risk and public protection, which were raised by the noble Lords, Lord Judd and Lord Beecham, and by my noble friend Lady Linklater. Public protection is absolutely at the heart of these reforms, and the National Probation Service will have a crucial role to play in this. It will risk assess every offender at the outset and retain the management of offenders who pose a high risk of serious harm to the public and who have committed more serious offences. Community rehabilitation companies will be contractually obliged to work with the National Probation Service to manage those offenders at risk of causing serious harm. Any offender whose risk level escalates to "high" during their sentence will be transferred back to the National Probation Service.

The noble Lord, Lord Judd, asked various questions about the ultimate responsibility for managing the risk of harm posed by offenders. The public sector has overall responsibility for public protection and the MoJ will ensure the effective management of risk of serious harms.

I draw noble Lords' attention to the much greater influence the National Probation Service will give probation within government. The directors of probation for England and for Wales will both sit on the NOMS board and will be able to advise Ministers directly on policy and operational matters. That is a significant improvement on the current system, in which probation is very much the junior partner to the Prison Service.

My noble friend Lady Linklater talked about transfer from the National Probation Service back to the CRC if the risk decreases. This will not happen: if an offender is transferred to the NPS they will remain with the NPS for the duration of their supervision.

The noble Lord, Lord Ponsonby, said that continuity of management and supervision is essential. He comes at this subject with great expertise and I agree with him. Each offender will continue to be managed by the same organisation—NPS or CRC—unless his or her risk escalates to high. For someone managed by the CRC, the NPS will have a role in dealing with a breach and in the risk assessment at the outset but the offender manager itself will not change.

To conclude, as I said at the start of my speech, we have now launched the competition to find providers of rehabilitation services. The Ministry of Justice is working closely with probation trusts to prepare for the implementation. We have also published detailed plans of how we see the new system working and we continue to seek views on key aspects such as the payment mechanism. I welcome the opportunity that this debate has given the House to discuss these details. I assure all noble Lords that the Government are committed to continuing to engage with noble Lords in these reforms as they progress.

I will end with what is at stake here: the extension of support and supervision through the gate for short-sentence offenders and the possibility of a sustained reduction in reoffending rates. In respect of what has been said today, I know that that is a global aim shared by all noble Lords across the House. These reforms will allow us to do just that and will bring significant benefits, most importantly, for both victims and communities.

Care Bill [HL]

Report (3rd Day) (Continued)

8.32 pm

Clause 72: Prisoners and persons in approved premises etc.

Amendment 136A

Moved by ***Lord Patel of Bradford***

136A: Clause 72, page 61, line 18, leave out from beginning to "not" in line 19 and insert "Section 42 and 47 does"

Lord Patel of Bradford (Lab): My Lords, Amendments 136A and 136B seek to ensure that people in prison and those residing in approved premises have equivalence of care when it comes to safeguarding inquiries by local authorities. Noble Lords may remember that I raised this issue in Committee but I was a little concerned by the response I received from the Minister on that occasion. I am grateful to Jenny Talbot and her team at the Prison Reform Trust for all the support and guidance they have provided throughout.

I welcome the Government's commitment in this Bill to place responsibility for the social care of adult prisoners with the local authority in whose area the prison is located. The Bill outlines the responsibilities of local authorities towards people in prison who have care and support needs and would ensure that people in prisons are able to access care and support on a similar basis to those in the community. However, having made such a significant and welcome commitment to the social care of prisoners, there is an anomaly in the Bill, which states that people in prison and people residing in approved premises are not to receive equivalence of care when it comes to safeguarding inquiries by local authorities. Surely denying people in prison and people residing in approved premises the benefit of an inquiry by the local authority when safeguarding concerns are raised places an already vulnerable group of individuals at even greater risk.

Of course, I understand that prisons have a whole range of safeguarding measures in place. However, when there is a real problem that a prison has not resolved, why can a local authority not have an inquiry for a person who is vulnerable and at risk? Moreover, I cannot understand why people in approved premises—in other words, people who have been released from prison and are living in the community; for example, in a probation hostel—should be excluded from local authority safeguarding inquiries. If the local authority is not responsible for safeguarding vulnerable adults in approved premises in the community, who is?

When I raised this issue in Committee, the noble Baroness, Lady Northover, stated,

"if local authorities must also conduct inquiries in prisons and approved premises, we run the risk of duplicating inquiries. Prison governors and directors have the primary responsibility for preventing abuse or neglect of prisoners with care and support needs. Prison governors already have a duty to care for and safeguard prisoners. If we duplicate this responsibility, we run the risk that the lack of clarity will mean that safeguarding concerns fall between agencies".—[*Official Report*, 29/7/13; col. 1585.]

I have a number of concerns about this response, two in particular. First, with regard to people in prison, the noble Baroness talked about the duplication of effort and lack of clarity. I suggest that this is simply not the case. My amendment would not limit the responsibility that prisons already have. On the contrary, their involvement on safeguarding adults boards would help to ensure shared learning and expertise, including, where necessary, the option for a safeguarding inquiry should safeguarding concerns not be resolved by the individual prison.

In fact, inquiries by local authorities should be viewed as another tool to help ensure our prisons are safe for both vulnerable prisoners and the staff who work with them. I am not suggesting that local authorities need to be directly involved in all interventions in prisons or that local safeguarding teams would need to be called upon to intervene in every safeguarding concern raised. However, directors of adult services need to be confident that their standards are consistent with those set out in the report *No Secrets* and any exceptions are explicit and jointly agreed. Therefore, I believe that an inquiry by a local authority will not duplicate the excellent work undertaken by Her Majesty's Inspectorate of Prisons, or by the prison itself. It will complement and enhance it, and could potentially help save lives.

[Lord Patel of Bradford]

Secondly, the noble Baroness did not provide an answer as to who would be responsible for the safeguarding of people in approved premises, if it is not the local authority. For the sake of clarity, I will ask the question again. As I understand it, approved premises are the responsibility of the probation service and not of the prison service. Any responsibilities that prison governors have for safeguarding adult offenders end once that person is released and physically leaves the premises. As the Bill currently stands, people living in approved premises will not be the responsibility of local authorities as is everybody else who lives in the community. So if someone is living in approved premises, such as a probation hostel, and is part of the community, as is anybody else, and that person has been abused or neglected or is at serious risk, who will have the obligation to carry out a safeguarding inquiry?

In terms of safeguarding inquiries by the local authority, not providing people in prison or who reside in approved premises with the same equivalence of care as for other people in the community makes little sense. The Bill establishes that equivalence of care applies to prisoners, and this should extend to safeguarding and to how safeguarding concerns are dealt with. Local authority adult safeguarding procedures are well established within local communities and the safeguarding of people in prisons and of those residing in approved premises should not be excluded from this body of expertise.

Of course, prisons and approved premises, such as hospitals and care homes, should have their own internal safeguarding arrangements and responses to safeguarding concerns. However, by excluding prisons and approved premises from safeguarding inquiries by the local authority, prisoners and people residing in approved premises will be denied the equivalent protections afforded to other vulnerable adults. Further, the opportunity for constructive dialogue and shared learning, which some prisons and local authorities currently enjoy, may also be lost. As the Bill stands, this is a serious gap which places a very vulnerable group at risk. Therefore, I hope the Minister can provide some clarification, reassurance or, better still, accept my amendments. I beg to move.

Baroness Masham of Ilton (CB): My Lords, I hope that the Minister will take note of the very serious points which the noble Lord, Lord Patel of Bradford, has made to your Lordships tonight.

The Parliamentary Under-Secretary of State, Department of Health (Earl Howe) (Con): My Lords, these two amendments deal with changes to Clause 72 to impose a duty on local authorities to make safeguarding inquiries in prisons and approved premises. I thank the noble Lord, Lord Patel, for tabling these amendments. We strongly agree that a person with care and support needs should be protected against abuse or neglect wherever they live.

Prison governors and directors, and the probation trust in the case of approved premises, are responsible for safeguarding prisoners and for protecting them from abuse and neglect. They have in place procedures to follow in response to allegations of abuse or neglect, and they must provide assurance on this to the National Offender Management Service. The UK operates a comprehensive level of monitoring and scrutiny within prisons to ensure that prisoners are kept safe and secure and that governors and directors are accountable for taking steps to improve matters if necessary.

We have in place a fully independent prison inspectorate that carries out a rigorous programme of scrutiny; more than 1,700 volunteers on prison independent monitoring boards who monitor the treatment of adult prisoners; and a Prisons and Probation Ombudsman who investigates both the complaints of those in prison and all deaths that occur among prisoners. Her Majesty's Chief Inspector of Prisons and the Prison and Probation Ombudsman require assurance that safeguarding procedures are in place and their implementation provides equivalent protection to that available in the community. Investigations by the Ombudsman will provide learning to improve effectiveness. The important thing is not to impose a duty on another body to conduct inquiries in prisons and approved premises, but to ensure that the procedures within the prisons and approved premises are informed by best practice and local expertise.

The Ministry of Justice and the National Offender Management Service have acknowledged that there is a need for improved directions on safeguarding to the prison service and probation trusts. They will be working with officials from my department and stakeholders to develop instructions and guidance that will give improved clarity about the roles and responsibilities of the prison service and probation trusts in safeguarding adults in their care. The Ministry of Justice encourages prison staff to be involved with local safeguarding adults boards, but the nature of that involvement is best determined at local level.

The Ministry of Justice and the National Offender Management Service will be producing guidance for prison staff on safeguarding in conjunction with their partners. This will be consistent with the broader advice and guidance on safeguarding adults in the community and will ensure that the importance of active engagements with SABs is routinely reiterated to prison staff. Any particular safeguarding considerations for older prisoners and those with dementia will be part of this operational policy. The guidance will set out clear instructions on the need for structured relationships with local safeguarding boards; for example, the model being employed by Surrey, where a memorandum of understanding sets out how prison staff will benefit from the expertise of social services and local authority safeguarding teams. It will also set out how and in what instances referrals to SABs will be made.

I hope that I have reassured the noble Lord, Lord Patel of Bradford, that the existing position makes clear the responsibility and accountability for the safeguarding and protection of prisoners, and that further guidance to prisons and approved premises will bring about the improvement and joint working that we all want to see. The proposed amendments to Clause 72 are therefore not necessary and I would respectfully ask him to withdraw this amendment.

Lord Patel of Bradford: My Lords, I thank the Minister for that informative response and I take on board completely the fact that prisons and the MoJ

have developed some good safeguarding measures. I am pleased that further guidance is to be issued to encourage governors and directors to attend local authority safeguarding adults board meetings. I am fairly happy about prisons, prisoner safeguarding and liaison with local authorities. However, for clarification, if someone is living in approved premises, my understanding is that that has nothing to do with the prison governor or the prison because they are in the community living in, say, a bail hostel. Who has responsibility for any serious issue of neglect? I do not think that the probation service undertakes safeguarding inquiries. It would be the local authority, but this clause seems to suggest that it would not be; rather, that it would be the prison governor. That does not make sense to me, although perhaps I do not understand it completely. Of course, one assumes that the local authority would have responsibility for someone in the community, but this provision clearly states that it does not.

Earl Howe: My Lords, the advice I have received is that the probation trust would have that responsibility.

Lord Patel of Bradford: For the record, because no one on the outside seems to have been able to give me an answer, someone would have to report to the probation trust that a person is being neglected or abused and it would carry out a safeguarding inquiry. It would not be the local authority or the prison.

Earl Howe: That indeed is my understanding.

Lord Patel of Bradford: If that is the case and it is correct, I beg leave to withdraw the amendment.

Amendment 136A withdrawn.

8.45 pm

Amendment 136B not moved.

Amendment 137 not moved.

Clause 74: Guidance

Amendment 138

Moved by ***Earl Howe***

138: Clause 74, page 62, line 41, at end insert—

"( ) The Secretary of State must have regard to the general duty of local authorities under section 1(1) (promotion of individual well-being)—

(a) in issuing guidance for the purposes of subsection (1);

(b) in making regulations under this Part."

Amendment 138 agreed.

Clause 75: Delegation of local authority functions

Amendment 138A

Tabled by ***Lord Low of Dalston***

138A: Clause 75, page 63, line 26, at end insert—

"( ) In exercising any function to which an authorisation under this section relates, the person authorised is subject to the same legal obligations as the local authority."

The Deputy Chairman of Committees (Baroness Morris of Bolton) (Con): My Lords, are Amendments 138A and 138B consequential and therefore to be moved formally?

Earl Howe: My Lords, I do not think that the noble Lord, Lord Low, wished to move these amendments. He did of course move his earlier amendment which the House decided upon, but I think that he indicated he was satisfied with my reply on these amendments. I do not want to mislead the House at all, but I believe that that is right.

Amendments 138A and 138B not moved.

Amendment 139

Moved by ***Baroness Barker***

139: After Clause 76, insert the following new Clause—

"Older Persons' Commissioner

(1) In the Health and Social Care Act 2008, after section 128 insert—

"Part 2A

Older Persons' Commissioner

128A Establishment of an office of the Older Persons' Commissioner

(1) There shall be an office of the Older Persons' Commissioner.

(2) Schedule (The Older Persons' Commissioner) shall have effect with respect to the Older Persons' Commissioner.

128B Functions of the office of the Older Persons' Commissioner

(1) The Older Persons' Commissioner has the function under this Part of promoting the wellbeing, dignity and respect of older people and safeguarding and promoting their rights and welfare.

(2) In fulfilling their duties under subsection (1), the Older Persons' Commissioner may review, and monitor the operation of, arrangements falling within subsection (2), (3) or (4) for the purpose of ascertaining whether, and to what extent, the arrangements are effective in promoting the wellbeing, dignity and respect, and safeguarding and promoting the rights and welfare of older people.

(3) The arrangements falling within this subsection are the arrangements made by the providers of regulated services in England, or by the Secretary of State, for dealing with complaints or representations in respect of such services made by or on behalf of older people.

(4) The arrangements falling within this subsection are arrangements made by the providers of regulated services in England, or by the Secretary of State, for ensuring that proper action is taken in response to any disclosure of information which may tend to show that, in the course of, or in connection with, the provision of regulated services to older people—

(a) that a criminal offence has been committed;

(b) that a person has failed to comply with any legal obligation to which he is subject;

(c) that the health and safety of any person has been endangered; or

(d) that information tending to show that any matter falling within one of the preceding paragraphs has been deliberately concealed.

(5) The arrangements falling within this subsection are arrangements made (whether by providers of regulated services in England, by the Secretary of State or by any other person) for making persons available—

(a) to represent the views and wishes of older people to whom this Part applies; or

(b) to ensure the adequate provision to older people of advice and support of any prescribed kind.

(6) The Secretary of State may, by regulations confer power on the Older Persons' Commissioner to require prescribed persons to provide any information which the Older Persons' Commissioner considers it necessary or expedient to have for the purposes of his functions under this section.

(7) A statutory instrument containing regulations under subsection (5) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

128C Examination of cases by the Older Persons' Commissioner

(1) The Secretary of State may, by regulations, make provision for the examination by the Older Persons' Commissioner of the cases of particular older people.

(2) The regulations may include provision about—

(a) the types of case which may be examined;

(b) the circumstances in which an examination may be made;

(c) the procedure for conducting an examination, including provision about the representation of parties;

(d) the publication of reports following an examination.

(3) The regulations may, for the purposes of enabling the Older Persons' Commissioner to examine or determine whether any recommendation made in a report following an examination has been complied with, make provision for—

(a) requiring persons to provide the Older Persons' Commissioner with information; or

(b) requiring persons who hold or are accountable for information to provide the Older Persons' Commissioner with explanations or other assistance,

for the purpose of an examination or for the purposes of determining whether any recommendation made in a report following an examination has been complied with.

(4) For the purposes mentioned in subsection (3), the Older Persons' Commissioner shall have the same powers as the High Court in respect of—

(a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and

(b) the provision of information.

(5) No person shall be compelled for the purposes mentioned in subsection (3) to give any evidence or provide information which he could not be compelled to give or provide in civil proceedings before the High Court.

(6) The regulations may make provision for the payment by the Older Persons' Commissioner of sums in respect of expenses or allowances to persons who attend or provide information for the purposes mentioned in subsection (3).

(7) A statutory instrument containing the first regulations made under subsection (1), (2) or (3) is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(8) A statutory instrument that contains regulations made under subsection (6) is subject to annulment in pursuance of a resolution of either House of Parliament.

128D Obstruction

(1) The Older Persons' Commissioner may certify an offence to the High Court where—

(a) a person, without lawful excuse, obstructs him or any member of his staff in the exercise of any of his functions under regulations made under section 128B(5) or 128C; or

(b) a person is guilty of any act or omission in relation to an examination under regulations made by under section 128C which, if that examination were proceedings in the High Court, would constitute contempt of court.

(2) Where an offence is so certified the High Court may inquire into the matter; and after hearing—

(a) any witnesses who may be produced against or on behalf of the person charged with the offence; and

(b) any statement that may be offered in defence,

the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court.

128E Further functions

(1) The Older Persons' Commissioner may, in connection with his functions under this Part give advice and information to any person.

(2) Regulations may confer power on the Older Persons' Commissioner to assist an older person—

(a) in making a complaint or representation to or in respect of a provider of regulated services in England; or

(b) in any prescribed proceedings.

(3) For the purposes of subsection (2), assistance includes—

(a) financial assistance; and

(b) arranging for representation, or the giving of advice or assistance, by any person.

(4) Regulations under subsection (2) may also provide for assistance to be given on conditions, including (in the case of financial assistance) conditions requiring repayment in specified circumstances.

(5) Regulations may, in connection with the Older Persons' Commissioner's functions under this Part, confer further functions on the Commissioner.

(6) Regulations may, in particular, include provision about the making of reports on any matter connected with any of his functions.

(7) Apart from identifying any person investigated, a report by the Older Persons' Commissioner shall not—

(a) mention the name of any person, or

(b) include any particulars which, in the opinion of the Older Persons' Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Older Persons' Commissioner considers it necessary for the report to mention his name or include such particulars.

(8) For the purposes of the law of defamation, the publication of any matter by the Older Persons' Commissioner in a report is absolutely privileged.

(9) In subsection (1) of this section "proceedings" includes a procedure of any kind and any prospective proceedings.

(10) A statutory instrument containing the regulations under this section is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

128F Restrictions

(1) This Part does not authorise the Older Persons' Commissioner to enquire into or report on any matter so far as it is the subject of legal proceedings before, or has been determined by, a court or tribunal.

(2) This Part does not authorise the Commissioner to exercise any function which by virtue of an enactment is also exercisable by the prescribed person.

128G Interpretation

(1) For the purposes of this Part "regulated services" has the same definition as "regulated activity" in section 8 of this Act as they relate to older people.

(2) This Part applies to any older person normally domiciled in England."

(2) After Schedule 5, insert the following new Schedule—

Schedule 5A

The Older Persons' Commissioner

Status

1 (1) The Older Persons' Commissioner is to be a corporation sole.

(2) The Older Persons' Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the Older Persons' Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.

Appointment and tenure of office

2 Regulations may make provision—

(a) as to the appointment of the Older Persons' Commissioner (including any conditions to be fulfilled for appointment);

(b) as to the filling of vacancies in the office of Commissioner;

(c) as to the tenure of office of the Older Persons' Commissioner (including the circumstances in which he ceases to hold office or may be removed or suspended from office).

Remuneration

3 The Secretary of State shall—

(a) pay the Commissioner such remuneration and allowances; and

(b) pay, or make provision for the payment of, such pension or gratuities to or in respect of him, as may be provided for under the terms of his appointment.

Staff

4 (1) The Commissioner may appoint any staff he considers necessary for assisting him in the exercise of his functions, one of whom shall be appointed as deputy Commissioner.

(2) During any vacancy in the office of Commissioner or at any time when the Commissioner is for any reason unable to act, the deputy Commissioner shall exercise his functions (and any property or rights vested in the Commissioner may accordingly be dealt with by the deputy as if vested in him).

(3) Without prejudice to sub-paragraph (2), any member of the Commissioner's staff may, so far as authorised by him, exercise any of his functions.

General powers

5 (1) Subject to any directions given by the Secretary of State, the Commissioner may do anything which appears to him to be necessary or expedient for the purpose of, or in connection with, the exercise of his functions.

(2) That includes, in particular—

(a) co-operating with other public authorities in the United Kingdom;

(b) acquiring and disposing of land and other property; and

(c) entering into contracts.

Reports

6 Regulations may provide for the Commissioner to make periodic or other reports to the Secretary of State relating to the exercise of his functions and may require the reports to be published in the manner required by the regulations.

Accounts

7 (1) The Older Persons' Commissioner must keep accounts in such form as the Secretary of State may determine.

(2) The Older Persons' Commissioner must prepare annual accounts in respect of each financial year in such form as the Secretary of State may determine.

(3) The Older Persons' Commissioner must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may determine.

(4) The Comptroller and Auditor General must examine, certify and report on the annual accounts and must lay copies of the accounts and of his report before Parliament.

(5) In this paragraph "financial year", in relation to the Older Persons' Commissioner, means—

(a) the period beginning with the date on which the Older Persons' Commissioner is established and ending with the next 31st March following that date; and

(b) each successive period of twelve months ending with 31st March.

Payments

8 The Secretary of State may make payments to the Older Persons' Commissioner of such amounts, at such times and on such conditions (if any) as he considers appropriate.

General

9 In the House of Commons Disqualification Act 1975, in Part III of Schedule 1 (certain disqualifying offices), the following entries are inserted at the appropriate places—

"Older Persons' Commissioner."

"Member of the staff of the Older Persons' Commissioner."

10 In the Northern Ireland Assembly Disqualification Act 1975, the same entries as are set out in paragraph 9 are inserted at the appropriate places in Part III of Schedule 1.

11 (1) Regulations may provide that the office of Older Persons' Commissioner shall be added to the list of "Offices" in Schedule 1 to the Superannuation Act 1972 (offices etc. to which section 1 of that Act applies).

(2) The Secretary of State shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to provision made under sub-paragraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.""

Baroness Barker (LD): My Lords, given the hour I do not intend to detain the House for long, but I want to return to the subject of an older person's commissioner, an issue raised so eloquently by the noble Baroness, Lady Bakewell, at an earlier stage in our deliberations. I do so for the same reason that many noble Lords have raised issues in connection with this Bill. The issues remain the same, but the legislative landscape is changing quite considerably, and the practical nature of services for people who will be affected by the Bill is also changing radically. Given these immense changes, coupled with the demographic developments that we know about, it is important to remind ourselves that there are still some gaps in the representation and protection of vulnerable groups in our society that need to be addressed.

I have not been involved in the Children and Families Bill, which I regret somewhat, and particularly today because the Grand Committee has been talking about the establishment of a children's commissioner for England. Earlier on I looked at the proposal in some detail. It seeks the establishment of a person who is not a Crown employee and whose job will be to promote and protect the rights of children, and to have regard to the UN Convention on the Rights of the Child. Their primary job is to involve children who are living away from home or are in social care and to make known their views about their care. They do that by taking a systematic and thematic view of what is happening, and their job is to speak to government with the overall aim of improvement.

There is nothing there which is not needed by older people. I am going to talk about the fact that there is a raft of other bodies which have statutory duties in relation to older people, but there is a raft of bodies which have responsibilities in relation to care of children—not least of which is Ofsted. Despite children's rights being perhaps more strongly enshrined in law,

[Baroness Barker]
as they have been since the Children Act, we still need a Children's Commissioner. The fact remains that we need an older person's commissioner, too. We need somebody to be an advocate, to include older people and to talk to government. I do not want to pre-empt anything that might happen in your Lordships' House tomorrow, but the report of the noble Lord, Lord Filkin, is being debated. It sets out in fairly stark terms how ill prepared government is for the implications of an ageing society.

Had another group of amendments before us on Report been dealt with in a different way, I might have rowed back. Your Lordships' House decided the other day not to give powers of entry in cases where there is good reason to suspect that older people are being abused. I believe as firmly and as strongly as the noble Baroness, Lady Greengross, that that is absolutely wrong. If we are not going to give powers of entry in cases of abuse, then there is a case for there being an older person's commissioner to raise those issues and gather evidence. Let us be in no doubt there will be further, tragic cases of elder abuse, and in the wake of them there will be calls for something to be done. Well, I think that something can be done now in the form of this proposal.

When we next convene to discuss this Bill on Report, we will turn our attention to some amendments tabled by the noble Earl, Lord Howe, on behalf of the Government about the appointment of the chief inspectors. The appointment of chief inspectors as officers within the CQC is welcome. It is welcome that there is going to be a Chief Inspector of Hospitals; it is a good thing that there is going to be Chief Inspector of Adult Social Care—I imagine that we have begun to receive information from the Chief Inspector of Adult Social Care, who took up her position this week. But let us be in no doubt that, however independent, experienced and formidable are the individuals, their role is limited. The CQC investigates merely licensed providers; it does not even investigate pathways of care. We know that the majority of care and help in the future will take place in the community—that is where the bulk of older people will be. Those chief inspectors will have but a very limited role, however welcome is their appointment.

If I were in the Minister's shoes, I imagine that I would question whether the cost of setting up a commissioner makes it a valid thing to do. I sincerely hope that we will very soon be able to gather evidence from the commissioners, particularly the Older People's Commissioner, in Wales. I know it has not been set up with this particularly in mind but I hope that somebody, somewhere, begins to research the economic benefit of having an older persons' commissioner. We are going to have to look at the whole economics of ageing in a completely different way. The post of a commissioner could be very important and it would help if we started to move Government along to seeing older people as potentially economic assets in our country as well as people who need services. With that in mind, I beg to move.

Baroness Bakewell (Lab): I rise to support this amendment as I think the House would expect me to because I put forward a similar amendment during the passage of the Health and Social Care Bill.

So here we are again. Time rolls on. I want to refer to the annual report I wrote in 2008-09 about the job I had as the Voice of Older People. I wrote that the job had proved a bombshell. Within hours of the announcement being made responses began. Letters, encounters, meetings and seminars showed me the range of cares particular to older people. At that time equality was my agenda and the issues were about the promotion of things such as equality in retirement, pensions and equal pay. However, concerns rapidly expanded. In no time at all I was being inundated with dilemmas about care homes, housing, rent levels and public loos. Expatriates were writing to me about claiming their pensions. End-of-life treatment was on the agenda again.

This agenda has not gone away. It is growing and it will go on doing so. We will hear tomorrow about the implications of the demographic and right now we are awaiting the ramifications of the Dilnot report. There is a campaign to get older people online, led by the noble Baroness, Lady Lane-Fox. There are concerns about fuel prices. I have recently read that E.ON, with which I have a special deal for a limited price because I am old, is withdrawing that favour from older people. Why? Breast cancer is very much on the agenda for older people. The risk improves the older you get but it does not reduce after 70 or 75. It goes on being a killer and becomes more seriously so.

Which Bill that will come before the House can encompass this vast agenda of the entire population that is growing old? This is a very difficult problem for the matter of law. We need a commissioner who can embrace housing, pensions, health, welfare and money. We need someone who can listen. The main thing about a commissioner is that they are not the spokesman for the established government—they are about us. They speak to government about what it is we want, what it is we would like, and on what we need guidance. The agenda is huge.

I am well aware that there is a multitude of charitable organisations that deal with all sorts of this fragmented agenda. I pay particular tribute to Age UK which is very, very strong in dealing with these issues, but what we need is for our complaints to be funnelled through an individual who belongs on the side of the old, who addresses the rest of the community about all these issues. I know that the Minister knows that the agenda is a wide one. What we need to know is where we can place this need—on which Bill and in which House? I support the amendment.

Baroness Tyler of Enfield (LD): I rise very briefly to explain why I added my name to this amendment. I feel strongly that older people need their own advocate and it needs to be someone with real clout and real powers. The experience of the children's commissioner to which my noble friend Lady Barker has already referred is very relevant here. I was a civil servant in Whitehall for a long time. There were many different departments dealing with different aspects of children's policy but no one was joining it all up. When the children's commissioner came on the scene, the commissioner became a strong advocate of the cause of children and young people across the UK and caused Whitehall and government to respond in a different, more joined-up way.

I had the honour to be a member of the Select Committee that produced the *Ready for Ageing?* report. I very much look forward to the debate on that tomorrow. During its production, I learnt so much about the contribution that older people are making to society. To cite three quick figures: one in three working mothers relies on grandparents for childcare; 65% of older people support their older neighbours; the value of informal care provided by older people has been assessed to be £34 billion, and so many volunteers are older people. We do not hear about that. What do we hear about in the press? We hear about older people who are a terrible burden because they are consuming so much of scarce national resources. We hear about the graph of doom. It all sounds like a looming catastrophe. We do not hear about the incredibly valuable contribution that older people are making.

That is why I believe that older people need an advocate. Yes, it is to champion the great needs of an ageing society in public policy-making in central and local government; but it is also someone who can represent them, who understands their needs and can celebrate their values and achievements and, I hope, turn around the whole narrative that we have in this country about older people.

9 pm

Baroness Wheeler (Lab): My Lords, we are very sympathetic to what the noble Baronesses, Lady Barker and Lady Tyler, and my noble friend Lady Bakewell want to achieve through the amendment in promoting the well-being, dignity, rights and welfare of older people. My noble friend Lady Bakewell, in particular, has campaigned long and hard for an older person's commissioner and, as the Voice of Older People under the Labour Government, speaks first-hand about the job that needs to be done in government to join up policies on health, social care, housing, transport, welfare, work and pensions to address the economic and social challenges presented by an ageing society.

The importance of a cross-government overview and strategy on older people is why Labour has a shadow Cabinet Minister for Care and Older People. Liz Kendall has a vital role in ensuring joined-up policies across the range of services that must be changed and adapted to meet older people's growing and changing needs. The importance of developing a coherent strategy and vision for our old age was recently underlined by the excellent report of the Select Committee on Public Services and Demographic Change, referred to by the noble Baronesses, Lady Barker and Lady Tyler. The noble Baroness, Lady Barker, is entirely right to say that in *Ready for Ageing?* the committee described the UK and its society as being "woefully underprepared". It pointed out that the implications of an ageing society had not been assessed holistically and that it had been left to government departments,

"who have looked, in varying degrees, at the implications for their own policies and costs".

The committee called on the Government to look at ageing from the point of view of the public and to consider how,

"policies may need to change to equip people better to address longer lives".

When we consider that important report tomorrow, the role of an older person's commissioner in helping to face the future and meet the challenges so graphically set out by the committee and today will be a key part of that debate

A considerable amount of work and thought has gone into the drafting of Amendment 139, but the main emphasis seems to be on rights and redress, rather than the all encompassing and unique role envisaged by my noble friend Lady Bakewell in her Second Reading speech and earlier today. That would give the commissioner effective access to planning across different government departments.

We would prefer that broad approach, and, of course, we also need to learn from the experience of the older person's commissioners in Wales and Northern Ireland. We understand that the advocacy role has worked particularly well in Wales in promoting the rights and interests of older people and challenging discrimination.

Inevitably, costs are an important consideration. The older person's commissioner's salary, operational support and accountability costs would be significant. I would be interested to learn from the noble Earl whether the Government have undertaken any costing and impact work on that, as promised to my noble friend when she first raised this issue, as she said, under the Health and Social Care Bill.

Earl Howe: My Lords, I am grateful for the opportunity to discuss this extremely well crafted amendment, which proposes the establishment of an older persons' commissioner. Our ambition is to make this country one of the best places to grow old in and I begin by saying that I have some sympathy with the intention behind the amendment; to ensure that older people receive the high-quality care they need and also to support them to use the complaints system effectively when things go wrong. However, disappointingly for the noble Baronesses, I cannot subscribe to the solution that is proposed in the amendment. The main reason for this is that the provisions contained in the amendment are, by and large, covered by work already being undertaken elsewhere. The interests of service users are already protected through a number of routes.

I begin by citing the role of the CQC. The Care Quality Commission's role is to ensure providers of regulated activities in England provide people with safe, effective, compassionate and high-quality care. The new chief inspectors for hospitals, adult social care and general practice will champion the views of patients and service users and judge the quality of care. Then, separate from the CQC, the new chief social worker will ensure that social work practice is directly inputting into policy development and we now have Healthwatch, whose function it is to represent service users' views. If noble Lords look at what we are doing in the Bill, new statutory obligations are being introduced, such as the duties to establish safeguarding adults boards and to undertake safeguarding inquiries and/or reviews. We also have the government amendment to require independent advocacy in certain cases.

Looking beyond the Bill, the vulnerable older people's plan is working towards having an accountable clinician to ensure proactive care planning for older people and those with the most complex needs. Furthermore,

[Earl Howe]
we want older people to have a major voice in issues that affect them. The Minister for Care and Support and the Pensions Minister take part in the UK Advisory Forum on Ageing. This group gives Ministers the opportunity to engage with and hear directly from older people on the key issues affecting them. I suggest that all these steps, taken together, go a considerable way towards addressing the concerns at which the amendment is aimed, but I need to be clear that, to minimise the impact on the public purse, we would not envisage setting up a new public authority alongside those functions.

My noble friend Lady Barker asked why we should not have an older persons' commissioner since there is a children's commissioner? If an older persons' commissioner were established, the supporting structure would potentially be very large and would cost significantly more than the children's commissioner. This is not only because of the comparatively larger number of older people who receive services compared to children, but also because the amendment confers a wider range of functions on the older persons' commissioner than the children's commissioner.

Michelle Mitchell, former director-general of Age UK said last year:

"For us it's not just about having a commissioner; it's about ensuring that older people's issues are central to the mainstream – not only the government agenda, but business and the public sector as a whole".

I support that view. What matters, surely, is what is actually happening and whether the system is pulling together to make it happen. We want to ensure, quite simply, that issues affecting older people are at the heart of government business. I am happy to explore ways to further enhance the voice of older people, although without creating additional costly bureaucracies. On that basis, I hope that the noble Baronesses will feel somewhat comforted that there is a lot going on to protect the interests of older people and that my noble friend will therefore feel able to withdraw the amendment.

Baroness Barker: My Lords, I thank the Minister for his characteristically comprehensive response and I am in complete agreement with him: there is a great deal going on, much of which is valuable and effective. I return to the central issue: I am not convinced that there is coherence, either within government, across government or in government interactions with the private and voluntary sectors and with local government. That is the issue to which I will return, and it is a point that the noble Baroness, Lady Bakewell, has made so eloquently.

I accept that this amendment is not perfect; it was crafted in order to bring the older persons' commissioner within the scope of the Bill but it is not ideal. I thank the Minister for his response. We will continue to work away at this issue, I have no doubt. I beg leave to withdraw the amendment.

Amendment 139 withdrawn.

Amendment 140

Moved by ***Earl Howe***

140: Before Clause 77, insert the following new Clause—

"Duty of candour

In section 20 of the Health and Social Care Act 2008 (regulation of regulated activities), after subsection (5) insert—

"(5A) Regulations under this section must make provision as to the provision of information in a case where an incident of a specified description affecting a person's safety occurs in the course of the person being provided with a service.""

Earl Howe: My Lords, this amendment concerns the new statutory duty of candour. This will place a requirement on registered providers of health and adult social care to be open with patients and service users about failings in care. The Francis report made a clear recommendation that there should be a statutory obligation to observe a duty of candour on providers of healthcare who believe that treatment or care provided by them to a patient has caused death or serious injury. This would require the provider to inform the patient of that fact. This amendment is a major step towards implementing that key recommendation of the Francis report.

The Government's approach is to introduce this duty as a requirement for registration with the CQC. In Committee, noble Lords tabled amendments that sought to place the duty of candour in the Bill. The amendment that I am presenting today seeks to strike a balance; I make no apology for that, since it allows us to have the best of both worlds. The amendment tabled in my name makes it clear that the Government must introduce such a regulation. It does not present the Government with a choice; rather, it imposes a crystal clear obligation on the Government to put such a regulation in place. I hope that it will be welcome to noble Lords for those reasons. I beg to move.

Baroness Masham of Ilton (CB): My Lords, the duty of candour means honesty and straightforwardness. We desperately need an open, honest, transparent and compassionate health service, and I hope that Amendments 140 and 152 will help to achieve that.

Something has gone desperately wrong with the care in some hospitals and care homes. We now live in a litigious society, and I feel that that has been increased by cover-ups when something has gone wrong and gagging people who try to speak out. People will go to any lengths to find out what happened to their loved ones if they are not told and given an apology. Good medical personnel will explain and apologise if something adverse happens. So often, that is all that is needed.

Patients know that there are risks, if they are explained when they sign a consent form. When they go wrong, lessons should be learnt so that they do not happen again. That is one of the reasons why openness is so important. Have lessons been learnt after the horrific situation of the Mid Staffordshire hospital? Recently I heard of a former police superintendent who had had a brain injury due to an accident, and was a patient in a well known central London hospital. When his wife and young son went to visit him, they smelt him before they saw him. They found him facing the wall in bed, unable to move and lying in soiled sheets and wearing a filthy gown. His wife was so upset that she told a nurse, who just said that they were overworked. The next time the wife visited she found him sitting alone,

facing a curtain, looking miserable and wearing a pad that had not been changed. She said to her children, "We are taking Daddy home", and smuggled him out of the hospital.

9.15 pm

Where was the compassion? How many such cases are there throughout the country? I refer to the Francis report, which calls for a common culture to be shared throughout the system. These three characteristics are required: openness, enabling concerns to be raised and disclosed freely, without fear, and questions to be answered; transparency, allowing true information about performance and outcomes to be shared with staff, patients and the public; and candour, ensuring that patients harmed by a healthcare service are informed of the fact and an appropriate remedy is offered, whether or not a complaint has been made or a question asked about it. That requires all organisations and those working in them to be honest, open and truthful in all their dealings with patients and the public.

I am pleased that progress has been made since I moved a similar amendment to the Health and Social Care Bill. It is about time that the recommendations of the Francis report were put into operation.

Lord Hunt of Kings Heath: My Lords, the Opposition strongly support the thrust of the Francis report in its determination that the NHS be honest with patients who have been harmed. I very much echo the comments made by the noble Baroness, Lady Masham, in describing why we need an open culture. I welcome government Amendment 140. It is very important; we welcome the duty of candour being placed in the Bill. The amendment is less detailed than my own and will rely on regulations, as the noble Earl, Lord Howe, has said. The important thing is to get this in the Bill.

I have a couple of questions for the noble Earl. First, can he confirm that the regulations will be affirmative? Secondly, in considering the regulations, will he look at the issue of the threshold? For instance, the regulations might restrict the statutory duty of candour to cases that could be described as of severe harm or fatal; or it might go wider. In his report, Robert Francis used the word "serious". Clearly, there is a distinction between severe harm and seriousness, but most patients and their relatives, or anyone involved in anything that could be described as a serious case, would wish the organisation in the health service to be as open as possible about what had happened.

These are not easy issues; but it is noticeable that the being open guidance is clear that cases of moderate harm and above must be disclosed. The NHS constitution does not put any limit on the level of harm that would be disclosed. I do not expect the noble Earl to respond to the detail of those questions tonight, but in drafting the regulations it would be reassuring to know, first, that consultation will take place with patient groups on the contents of those regulations before they are published and, secondly, that the question of the threshold by which the seriousness of the case would come within the regulations will be given very great consideration.

I should—at the end of the day rather than the start—declare my interest. I remind noble Lords of the interest I declared two days ago.

Baroness Barker: I have a quick follow-up to the question of the noble Lord, Lord Hunt of Kings Heath. Sir Robert Francis's recommendations were clear that the duty of candour should apply where death or serious harm "may have been caused" or were believed or suspected to have been caused. That is an important distinction; it is not merely playing with words. When the Minister comes to respond, perhaps in writing, will he say whether that point will be covered in regulations?

Earl Howe: My Lords, I am sure that we all aiming for the same effect and that there is little difference in the approach that we are taking. The amendment of the noble Lord, Lord Hunt, is drafted as a stand-alone duty: it would place a duty of candour on providers, but it would operate outside of the CQC registration system. As such, it is not clear who would enforce the duty of candour or what would be the consequences for a provider who did not observe the duty.

Introducing the duty as a requirement for registration with the CQC comes with a ready-made enforcement vehicle, including the power to prosecute providers who do not meet the duty. In Committee, we explained why this is our preferred approach. It would give the flexibility to develop the duty in consultation with service users and carers. I can indeed confirm that patient groups will be included. The duty itself will have the same legal power in secondary legislation as it would in primary legislation.

We are making real progress in taking this forward. In the summer, the CQC consulted on plans to introduce a duty of candour set through its registration requirements. The CQC is due to publish the findings from the consultation shortly. The department plans to consult on a draft regulation later in the autumn. I assure noble Lords that both I and my officials would be pleased to discuss the content of the draft duty of candour regulation with them in detail as we develop the final regulation. I confirm to the noble Lord, Lord Hunt, that these will be affirmative regulations.

On the threshold, both the Francis and the Berwick reports recommended that the statutory duty of candour for CQC-registered providers should apply in instances of death or serious injury/incident. There is a balance to be struck. We accept the Berwick report finding that an automatic duty of candour covering every single error could lead to defensive documentation and large bureaucratic overheads that would distract from care.

I hope that my amendment reassures noble Lords of our strong commitment to introducing a duty of candour and that they will feel able—

Lord Hunt of Kings Heath: Can I take it that, if that is the Government's position, which will be set out in regulations, guidance to the providers of services regulated by the CQC would none the less make it clear that the principle of candour would apply to all such cases? I can see the distinction with regard to the seriousness

[Lord Hunt of Kings Heath]
of the incident in relation to the action that can be taken. The risk would be that a statutory duty of candour within the regulations might be taken the wrong way for cases which were not classified at such a serious level.

Earl Howe: I certainly take the noble Lord's point. There is an issue of interpretation which we will want to clarify through guidance. That is what we intend to do. I look forward to discussing this with him and other interested noble Lords in due course. I hope that that will be sufficient to persuade the noble Lord, Lord Hunt, not to press his amendment when we get to it.

Amendment 140 agreed.

Clause 77: Warning notice

Amendment 141 not moved.

Consideration on Report adjourned.

House adjourned at 9.24 pm.

Grand Committee

Wednesday, 16 October 2013.

Children and Families Bill

Committee (3rd Day)

3.45 pm

Relevant document: 7th and 9th Reports from the Delegated Powers Committee, 3rd Report from the Joint Committee on Human Rights.

The Deputy Chairman of Committees (Lord Colwyn) (Con): My Lords, if there is a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendment 40

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

40: After Clause 9, insert the following new Clause—

"Review of impact of under-occupancy penalty on prospective adopters, prospective special guardians and foster parents

Before the end of one year beginning with the day on which this Act is passed, the Secretary of State must—

(a) carry out a review of the impact of the housing under-occupancy penalty on prospective adopters, prospective special guardians and foster parents, and

(b) publish, and lay before both Houses of Parliament, a report of the conclusions of the review."

Baroness Jones of Whitchurch (Lab): My Lords, Amendment 40 focuses on the impact of the underoccupancy charge on would-be adopters, special guardians and foster parents. We know that there is a widely held concern about the negative impact of the housing underoccupancy charge or, as we call it, the bedroom tax. The plight of those who are unable to move to smaller properties, or who need the extra accommodation for obviously justifiable reasons is regularly highlighted in the media.

However, I want to concentrate our concerns today on a very specific consequence of the new charge, which is how it impacts on the already chronic shortage of existing and potential foster carers. As noble Lords will know, the bedroom tax restricts housing benefit to one bedroom per person or per couple living as part of a household. Tenants affected will face a 14% cut in housing benefit for the first "excess" bedroom and a 25% cut where two or more bedrooms are underoccupied. The average loss of income is estimated to be around £14 per week. Our concern is that foster children are not counted as part of the household for benefit purposes and therefore that, technically, all foster carers could face cuts in housing benefit.

This matter was raised by our colleagues in the Commons and last-minute changes announced in Committee by the Minister mean that foster carers are allowed one additional room in their homes, as long as they have registered as a foster carer or fostered a child within the past 12 months. This means that around 5,000 foster carers would be exempt from the bedroom tax, and obviously we welcome that concession. However, foster carers with more than one child will still face the bedroom tax. The reforms still apply to foster carers who have two or three bedrooms for fostering children.

Carers in this situation can apply to a discretionary housing fund for support with their housing costs but because of its discretionary nature, this is not guaranteed—and carers will have to reapply for this benefit every six weeks, even if they have fostered a child on a long-term basis. We do not believe that this is satisfactory. It shows a lack of joined-up thinking by the Government, given the current acute shortage of foster carers. We believe that if the rules remain as they are, foster carers will be deterred from providing foster care for more than one child at a time. This means, for example, that children in foster care are more likely to be separated from their siblings. With there already being a shortage of foster carers in the UK, these reforms are likely to mean fewer new recruits coming forward and children's well-being suffering as a result.

Our amendment is simple and modest. It would require the Secretary of State to review the impact of the bedroom tax on foster carers to see what impact this is having, on this group and to report back to Parliament on the conclusions within one year. When this was debated in the Commons, I understand that the Minister agreed to take this proposal away and think about it again.

The Parliamentary Under-Secretary of State for Schools (Lord Nash) (Con): I understand that the purpose of this amendment is to ask us to conduct this review. As I know that noble Lords are anxious to move on to the justice provisions, which my noble friend Lord McNally will be covering, it might assist the Committee to know that the Government are committed to conducting an independent assessment of the impact on these particular groups and will be commissioning this shortly. We agree with the noble Baroness that this is very important, and a report on the outcome will be published within the timescale that her amendment calls for—within a year of Royal Assent of the Bill. We will place a copy of the report in the Libraries of both Houses of Parliament. I hope that noble Lords will find that intervention helpful.

Baroness Jones of Whitchurch: I thank the Minister for that clarification. I was coming to that point. The clarification I was seeking was: will there be just one review, the DWP review that the Deputy Prime Minister announced yesterday, or will there be a separate review within the Department for Education? I am grateful for the Minister's clarification that it will be placed in the Library, but on an important issue such as this we need some assurance that there will be an opportunity for Parliament to debate the conclusions rather than just read them. Perhaps the Minister could clarify those points, which is what I was going to ask him to do anyway. I beg to move.

The Earl of Listowel (CB): My Lords, I am most grateful to the mover of this amendment but also to the Minister for this very good news. The noble Lord,

[The Earl of Listowel]
Lord Freud, took great trouble during the passage of the Welfare Reform Bill to consult the interested parties around foster care but I have a couple of questions for the Minister. What is the situation for families who are providing supported lodging for young people at university for whom they wish to keep a room open when they return? More generally, what is the position for families providing supported lodging for older young people who have left foster care but whom they still wish to support?

Lord Wigley (PC): My Lords, I will intervene very briefly if I may. Whereas Part 1 of the Bill largely did not apply to Wales, Part 2 to a large extent does. I therefore ask the Minister, in the context of the new clauses being proposed, whether any review that he will be undertaking will be in co-operation with the National Assembly of Wales and the Government of Wales, which have responsibility for education and social care but not for some aspects of social security and housing benefit. I would be grateful if he could at least give an indication that he will take that on board.

Lord Nash: My Lords, I should like to reassure noble Lords that the Government are committed to helping people foster, adopt and be special guardians to some of the most vulnerable children. We want to ensure that government policy supports this aim. As has already been pointed out, on 12 March my right honourable friend the Secretary of State for Work and Pensions announced an easement of the treatment of foster carers under the housing benefit policy to remove the spare room subsidy. Foster carers are now allowed one additional room under this policy, as are those who have a child placed with them for adoption. That will ensure that many foster carers will no longer be affected by removal of the spare room subsidy.

Adopted children, those placed for adoption and those being looked after by special guardians are treated as part of the family in the same way as birth children, so these children's bedrooms are also included in the bedroom assessment for the household. Prospective adopters and prospective special guardians awaiting a child being placed with them are treated differently. This is because these are temporary situations. People in these circumstances will be able to apply to the local authority for short-term assistance from the discretionary housing payment fund. My honourable friends the Minister for Children and Families and the Minister for Welfare Reform have written to local authorities highlighting that these groups should be a priority for discretionary housing payment funding. The measures the Government have taken should ensure that foster carers, prospective adopters and prospective special guardians are not unfairly treated by the removal of the spare room subsidy.

The Government are committed to conducting this review and it will be placed in the Library. It will be a matter for noble Lords as to whether or not they wish to debate it. The Government have commissioned a separate report from Ipsos MORI but, in answer to the noble Baroness's question, we will be having our own report on this matter.

I shall write to the noble Earl, Lord Listowel, in response to his questions about supported lodging. So far as concerns the comment of the noble Lord, Lord Wigley, we will talk to the Welsh Government regarding our review of foster carers, and I will write to the noble Lord further about this. In those circumstances, I urge the noble Baroness, Lady Jones of Whitchurch, to withdraw her amendment.

Baroness Jones of Whitchurch: My Lords, I thank the Minister for the information that he has given about the fact that there will be two different reviews. I could make the point that, of course, within a year a considerable amount of damage could already have been done not only to the incomes of the lowest paid and the poorest people in our society but potentially to the availability of foster and adopter volunteers. Having said that, I am grateful that a review is taking place. I think that we all need to have the evidence, and we need to have some empirical research that shows us the extent to which this is happening.

I thought that the Minister's response on whether there would be a debate was thoroughly inadequate. On a matter such as this, given that it has already been acknowledged that there is a potentially serious issue here, I should have thought that he could have taken more steps to determine that we could debate the findings. Nevertheless, at this stage, I beg leave to withdraw the amendment, although I shall no doubt come back to it at a future stage.

Amendment 40 withdrawn.

Amendment 41 not moved.

Amendment 42

Moved by ***Lord McColl of Dulwich)***

42: After Clause 9, insert the following new Clause—

"Child trafficking guardians for children who may have been victims of human trafficking

(1) The Children Act 1989 is amended as follows.

(2) After section 26A insert—

"26B Child trafficking guardians for children who may have been victims of human trafficking

(1) A child trafficking guardian shall be appointed to represent the best interests of each child who might be a victim of trafficking in human beings if the person who has parental responsibility for the child fulfils any of the conditions set out in subsection (3).

(2) The child trafficking guardian shall have the following responsibilities to—

(a) advocate that all decisions taken are in the child's best interest;

(b) advocate for the child to receive appropriate care, accommodation, medical treatment, including psychological assistance, education, translation and interpretation services;

(c) advocate for the child's access to legal and other representation where necessary;

(d) consult with, advise and keep the child victim informed of legal rights;

(e) where appropriate instruct the solicitor representing the child on all matters relevant to the interests of the child arising in the course of proceedings including possibilities for appeal;

(f) contribute to identification of a plan to safeguard and promote the long-term welfare of the child based on an individual assessment of that child's best interests;

(g) keep the child informed of all relevant immigration, criminal or compensation proceedings;

(h) provide a link between the child and various organisations who may provide services to the child;

(i) assist in establishing contact with the child's family, where the child so wishes and it is in the child's best interests;

(j) liaise with the UK Border Agency where appropriate;

(k) attend all police interviews with the child; and

(l) accompany the child whenever the child moves to new accommodation.

(3) Subsection (1) shall apply if the person who has parental responsibility for the child—

(a) is suspected of taking part in the trafficking of human beings;

(b) has another conflict of interest with the child;

(c) is not in contact with the child;

(d) is in a country outside the United Kingdom; or

(e) is a local authority.

(4) In subsection (1), a child trafficking guardian may be—

(a) an employee of a statutory body;

(b) an employee of a recognised charitable organisation; or

(c) a volunteer for a recognised charitable organisation.

(5) Where a child trafficking guardian is appointed under subsection (1), the authority of the child trafficking guardian in relation to the child shall be recognised by any relevant body.

(6) In subsection (5), a "relevant body" means a person or organisation—

(a) which provides services to the child; or

(b) to which the child needs access in relation to being a victim.

(7) The appropriate national authority—

(a) shall by order set out the arrangements for the appointment of a child trafficking guardian as soon as possible after a child is identified as a potential victim of trafficking in human beings;

(b) may make rules about the training courses to be completed before a person may discharge duties as a child trafficking guardian;

(c) shall by order set out the arrangements for the provision of support services for persons discharging duties as a child trafficking guardian; and

(d) shall by order designate organisations as a "recognised charitable organisation" for the purposes of this section.

(8) In this section a child is considered to be a "potential victim of trafficking in human beings" when—

(a) there has been a conclusive determination that the individual is a victim of trafficking in human beings, or

(b) there are reasonable grounds to believe that the individual is such a victim and there has not been a conclusive determination that the individual is not such a victim.

(9) For the purposes of subsection (8)(b) there are reasonable grounds to believe that an individual is a victim of trafficking in human beings if a competent authority has determined for the purposes of Article 10 of the Trafficking Convention (identification of victims) that there are such grounds.

(10) For the purposes of subsection (8) there is a conclusive determination that an individual is or is not a victim of trafficking in human beings when, on completion of the identification process required by Article 10 of the Trafficking Convention, a competent authority concludes that the individual is or is not such a victim.

(11) In this section—

"parental responsibility" has the same meaning as section 3 of this Act;

"competent authority" means a person who is a competent authority of the United Kingdom for the purposes of the Trafficking Convention;

"the Trafficking Convention" means the Council of Europe Convention on Action against Trafficking in Human Beings (done at Warsaw on 16 May 2005);

"trafficking in human beings" has the same meaning as in the Trafficking Convention.""

Lord McColl of Dulwich (Con): My Lords, human trafficking is a brutal and shocking business. Trafficked people are modern-day slaves and are among the most vulnerable people in our society. They are deprived of their liberty and brought to a foreign country where they do not speak the language. They have no friends or family, and they do not know whom they can trust or where they can go for help. They have their passports taken away and are then imprisoned, sometimes behind locked doors but more effectively through physical and psychological threats, often to the safety of their families at home, even abroad. This desperate vulnerability is massively compounded when we are dealing with children, for obvious reasons.

It is with these children in view that I move Amendment 42, which recalls our deliberations on a similar amendment, Amendment 57A, which I moved during our debate on the Protection of Freedoms Bill in February 2012. In discussing that amendment on 15 February 2012, a number of noble Lords spoke passionately about the plight of trafficked children and the care they receive after they have been rescued. They emphasised the large number of trafficked children who had been lost from local authority care. The figures may have improved a little since 2010, when, over the preceding five years, 301 of the 942 trafficked children who were rescued then went missing from care. However, the Centre for Social Justice report in March of this year reported that many children are still going missing, with one local authority recording 25 trafficked children going missing in just five months in 2011.

Why am I revisiting this issue today? On the occasion of moving Amendment 57A at the Report stage of the Protection of Freedoms Bill, I was supported by three eminent co-signatories: the noble Baroness, Lady Royall, the shadow Leader of the House in the Labour Party; the noble Lord, Lord Carlile of Berriew, from the Liberal Democrats; and the noble and learned Baroness, Lady Butler-Sloss, from the Cross Benches. There was considerable momentum behind the amendment but I was pressed by the Government not to divide and, instead, to allow the commissioning of research into the arrangements for the care of trafficked children, and on that basis I agreed not to divide.

4 pm

I return to the subject today because, on 12 September this year, the report that the Home Office commissioned further to that debate was published and had its parliamentary launch yesterday, which some of your Lordships were able to attend. Produced by the Children's Society and the Refugee Council, the report, entitled

[Lord McColl of Dulwich]
Still at Risk, clearly supports what I said on 15 February 2012 and calls, as I did then and do again today, for the provision of child trafficking guardians. I shall return to the report shortly but, in introducing Amendment 42, I must remind noble Lords what it is that child trafficking guardians actually do and explain why the current structures of care do not amount to the same thing.

First, what do they do? The role of a child trafficking guardian has been developed by UNICEF, and my amendment is based on its model as set out in its important 2006 publication guidelines on the protection of child victims of trafficking. Child trafficking guardians have two main functions. First, they provide a constant point of reference. Child victims of trafficking are, for the reasons I have explained, especially vulnerable. When they are rescued they find themselves in a situation where they have to engage with multiple state agencies—the police, the courts, local authorities, social workers, education and so on. That is a daunting prospect for an adult in a foreign country—how much more so for a child.

When engaging with each agency, they have to deal with a different person and go through the process of telling their painful story again and again. In this context a child trafficking guardian provides an absolutely crucial role. It is not about creating an additional layer of bureaucracy as some people have alleged: the whole point is that the child trafficking guardian places no additional burden on the child but helps them to navigate their way through the existing bureaucracy. They are appointed as a constant in a bewildering sea of different agencies to help the child negotiate that sea.

The second main function of a child trafficking guardian is that they have a legal recognition to advocate on the child's behalf and in the child's best interests in all the negotiations with different state agencies. If the child does not want the burden of having to repeat their story again and again, they can ask the child trafficking guardian to speak for them.

Having reminded noble Lords of the remit of child trafficking guardians, I now turn to the arguments that the Government have previously advanced to suggest that the law already effectively makes provision for child trafficking guardians. In the first instance, the Government pointed out that the Children Act places on local authorities a general obligation to protect the welfare of all children within their boundaries. The Government have further pointed to three specific roles in the Children Act that assist the local authority in this task—namely, Section 26 advocates, independent visitors and independent reviewing officers. After close examination, as I explained in February 2012, I and other noble Lords have concluded that none of these meets the requirements of a child trafficking guardian, either according to the UNICEF definition or our obligations under the EU anti-trafficking directive.

Let me deal first with the advocates. Advocates appointed under Section 26A of the Children Act act on the child's behalf only in relation to local authority case reviews and are not appointed from the moment a child is identified as a victim of trafficking. They become involved in supporting a child only if the child chooses to take advantage of the service. As one solicitor pointed out to me, this assumes the child in question is mature enough to make this decision. The solicitor wanted to know how this would help the very young trafficked children with whom they had worked, some of whom were under two years old.

Secondly, independent visitors can be appointed under Section 23ZB if a local authority considers it is in a child's best interest. However, we should remember they provide only a befriending or visiting role and do not have the right to advocate on a child's behalf. Section 25A requires the appointment of an independent reviewing officer for every looked-after child, with a specific function in relation to reviews of a child's care. These officers are not required to have regular contact with a child between the review meetings and do not accompany or support the child in other contexts.

Having considered what child trafficking guardians do and the reasons why current legislation does not provide an equivalent, I now come to the research findings of the *Still at Risk* report, commissioned by the Government in preference to accepting my child trafficking guardian amendment of February 2012. I have to tell noble Lords that when I read the report, I felt that we had been absolutely correct to move Amendment 57A to the Protection of Freedoms Bill in 2012, and was convinced of the need to find the first available opportunity to retable my amendment. I must admit to great sorrow and a little frustration that we have been unable to move forward on this issue for 18 months. It pains me greatly to think of children who have not received the help they deserve in that intervening period.

The need for someone who can accompany a child through the complexities of the care system, the immigration system and the court process was articulated clearly by a girl called Precious, who was interviewed for the review. She said, "If you come newly, you can't even understand because you have never been in a place like this before, somebody like me, I don't know my way out. I can't even speak. I don't know how to talk to anyone. I wish I knew my rights. I wish I knew what to do". How pathetic. Another girl, Josephine, said, "When I went to social services I didn't have a social worker and my case was from one person to another person so I didn't really know who I'm gonna go talk to because I didn't have no one who really knew my case … And another thing, because of my language it was so difficult for me to try to express my feelings … emotionally, I was broken, I didn't have no feelings at all, I didn't know how my life would end up, I didn't know what I'm gonna do, I didn't know who; I didn't know what I was any more". How sad.

The report found great variation in the quality of care provided to trafficked children, as we heard yesterday from the researchers. The report states that,

"only a minority of the children were happy with the care and support they had received from their social workers. Although some individual social workers were identified as having been supportive, practice varied widely. Children often had multiple social workers or key workers, resulting in little continuity of care and children having to frequently repeat their stories of the traumatic abuse and exploitation they had experienced. Local authorities reported that they sometimes experience barriers to

providing an allocated permanent social worker, and stakeholders emphasised that whoever supports the child needs the skills to manage complex situations".

I now make some detailed comments about Amendment 42, which, although largely identical in effect to Amendment 57A, is different in structure. Amendment 42 requires each trafficked child to be allocated a child trafficking guardian as soon as possible after the child is identified as a potential victim of trafficking—a key requirement of the EU anti-trafficking directive. The particular responsibilities in proposed new subsection (2) have been based on UNICEF guidelines and are focused on providing that independent and continuous support in relation to all agencies; and that is what is currently lacking.

One key element of a child trafficking guardian's responsibility is their role as an advocate on behalf of the child, which can include, where appropriate, instructing the child's solicitor. This role and the need for its recognition by all relevant agencies are set out in proposed new subsection (6). This is vital if the advocacy function is to be effective and would enable the guardian to speak up for the child's best interests to all those involved in the case.

As the *Still at Risk* report highlights, some voluntary organisations currently provide excellent advocacy and support services for children who are trafficked and, indeed, the report quotes some children as saying that this was the most helpful of all the support that they had received. However, these organisations have no recognition in law in relation to the child and are therefore able to assist only where the agencies and professionals handling the child's case are open to their involvement. The amendment would provide a mechanism to give these organisations that legal recognition.

This brings me to another noteworthy aspect of the amendment. Proposed new subsection (4) allows for child trafficking guardians to be public sector employees, or staff or volunteers in a voluntary organisation. This allows the Government flexibility in determining how these services should be provided and rises to the challenge of managing costs for the good of our public finances—something that this Government have rightly prioritised. It could be expensive to appoint salaried staff and create a public sector agency to fulfil this role, whereas equipping charities or volunteers to do the work could be extremely cost-effective, which noble Lords will know appeals to the thrifty Scotsman in me.

In September 2012, in its report on the UK's compliance with the Council of Europe's anti-trafficking convention, the treaty-monitoring body known as GRETA said:

"A system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing".

The report recommends that the Government,

"ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian".

In June 2013, the US State Department's *Trafficking in Persons Report* recommended that the UK,

"establish a system of guardianship for unaccompanied foreign children".

In June 2013, the Joint Committee on Human Rights said:

"We are persuaded that providing children with a guardian could support children more effectively in navigating asylum, immigration and support structures and help them to have their voices heard".

It is clear to me that child trafficking guardians are an idea whose time has come. The case for their provision is very clear, both from the research and through subsequent international developments. I firmly believe that the time for talking is over and the time for action is here. I very much hope that the Government will accept the amendment and I look forward to hearing what the Minister has to say. I beg to move.

4.15 pm

Baroness Massey of Darwen (Lab): My Lords, we are all aware of the passionate concern of the noble Lord, Lord McColl, for victims of trafficking, and of the concern of the noble and learned Baroness, Lady Butler-Sloss. I support the amendment strongly and do so as patron of the child trafficking unit at the University of Bedfordshire, which does amazing work in supporting young people who have been trafficked. The issue foremost in its mind is the importance of guardianship and advocacy. Children are still at risk and the present arrangements are not adequate. The noble Lord, Lord McColl, eloquently detailed the need for guardianship, and I wish to add a few remarks.

I remember when the noble Lord, Lord McColl, introduced the Second Reading of his Private Member's Bill on human trafficking to the House in November 2011. These issues came up then. The right reverend Prelate the Bishop of St Edmundsbury and Ipswich spoke of trafficking being an issue for our common humanity. Nothing seems to have changed and, in particular, children who are trafficked need all the help they can get. A guardian who advocates in the best interests of the child is a vital element in that support.

Many of these children remain unidentified unless they are associated with criminal offences. I am thinking of young boys who work in cannabis factories, of which, I read in the newspaper, there are about 500,000 in this country. These boys get caught and the bosses escape. I am thinking of girls sold into the sex trade, who have their passports removed and are kept locked away to have sex with dozens of men a day or are sold into domestic slavery. Sometimes, if these children escape or are discovered, they are passed around the systems. They do not speak much English and they have no knowledge of the support systems that might help them. Many simply go missing.

Even if they are found and receive support, it may be well meaning but inappropriate. I remember one girl who was accommodated in a flat in a suburb outside London with no friends. On Christmas Day, a social worker took round a cake. Apart from that she was isolated, and the isolation of such children can mean that they are at real risk of being unprotected and retrafficked.

These young people need a guardian, as the noble Lord, Lord McColl said, to help with language difficulties, legal issues, accommodation, finding a friendship group

[Baroness Massey of Darwen]
and protection. It may be the case that the people who trafficked the young person will come looking for them. Importantly, as the noble Lord, Lord McColl, emphasised, the guardian can help with the liaison between the agencies concerned with the child, such as police, social workers, health and education. This is an issue of child protection and should be in the plans of every local authority. Guardianship is the best way to ensure that there is a positive outcome for these children who have undergone the most horrendous and degrading experiences.

The University of Bedfordshire's child trafficking unit provides interventions for trafficked young people, with individual and group support and education. I want to share briefly the story of one such young woman, just to show that enormous progress can be made with sympathy, understanding and formal support. I first met this young woman when she was about 17 and had been trafficked from a country in Africa. Her English was poor and she was still traumatised. Two years later she came to an event here in the Cholmondeley Room in the House of Lords, where trafficked young people presented their experiences in works of art and short speeches. The noble Lord, Lord McColl, attended and I think he was impressed. He certainly took many photographs.

The young woman I am talking about spoke very passionately to about 80 people. After the ceremony she said to me, "Did you notice anything about me today?". I said, "Not in particular", although she was confident, attractive and charismatic. She said, "I read my speech". Two years earlier she could not read. This young woman, with support and encouragement from guardians and advocates, was now attending college and had ambitions. I do not think I need to say any more about the importance of guardianship and advocacy for trafficked children.

Baroness Butler-Sloss (CB): My Lords, I intended to put my name to this amendment but failed to do so. I have supported each of the amendments put forward by the noble Lord, Lord McColl, and I strongly support this one. He has set out extremely effectively, supported by the noble Baroness, Lady Massey, nearly everything that needs to be said and I do not propose to say very much.

I wish to pick up on what the noble Baroness, Lady Massey, said about this being an issue of child protection, among other matters. As I said earlier this week, very often when children go missing from local authority care, the local authorities do not know that they are trafficked children. Therefore, no one is identifying them and looking for them with the special care that is required for this small group of children. They are treated as ordinary missing children who will probably come back. This is a very serious child protection issue.

The other point made by the noble Lord, Lord McColl, is so important that I shall repeat it. There is a real need for one constant person to take an interest in the child, meet the child early on, offer a mobile phone number, be at the end of a telephone and be able to answer the questions that a child with very limited or no English will need to ask someone who can be there. One of the sadnesses highlighted at the *Still at Risk* event that I was glad to attend yesterday is that these children have multiple social workers. We all know the underresourcing and overwork of social workers, so can they give a special degree of care to a foreign trafficked child who is not even under a care order? Consequently, they have to cope with no one person in their life.

What the noble Lord, Lord McColl, is suggesting in this amendment is crucial. We are failing a small number of grievously disadvantaged foreign children. We are talking about hundreds, not thousands. There was a particularly worrying case in Kent, where children who had been trafficked into Kent were being trafficked out by the same traffickers. Fortunately, Kent Police got hold of this, but if there had been a guardian, that guardian would have kept in touch with the child, with any luck, and would probably have been able to prevent it as they would be the one person who would know where the child was and, in any event, would be in touch with the suitable authorities to try to deal with it.

I have been talking to Barnardo's about whether it would be prepared to offer some sort of service. The most important point that it makes is that there has to be a sufficient legal status because the majority of social services and, indeed, the NHS, talk about the confidentiality of teenage children and so on, so they will not necessarily tell somebody coming in what is going on. If the person has legal status, people have to open their records. In the absence of that sufficient legal status, a wonderful organisation, such as Barnardo's, the NSPCC, the Children's Society and so on, would not be able to offer that service, even if it were to be financially supported to do it.

The noble Lord, Lord McColl, has raised a very important issue. He and I were, if I may put it rather bluntly, fobbed off by the Government in 2011 and 2012 on the basis that there would be this report, and nothing is happening now. Children are going missing and are suffering the trauma of trying to cope with inadequate English through the multiplicity of agencies with which they have to deal. Quite simply, it is unjust. It is not good enough, and we as a country should be rather ashamed of ourselves.

Baroness Lister of Burtersett (Lab): My Lords, the noble Lord, Lord McColl, made a very powerful case and referred to the Joint Committee on Human Rights' report on its inquiry into unaccompanied children. I want to underline that because we took evidence from people in Scotland with experience of the guardianship system there, and I was very impressed by what we were told. We have clear evidence there of how it can work and can support the kind of children whom we have been hearing from. I was not around when the noble Lord first raised this issue, and it is very sad that there has been this long delay. I hope that this House can now do something to rectify that situation.

Baroness Hamwee (LD): My Lords, I recall the noble Lord's Private Member's Bill, his previous amendment and so on. I read the *Still at Risk* report

feeling almost sick. One of the things that makes me feel sick is that so often, apparently, we criminalise children for whom we should be caring because we fail to identify their situation. The point I want to make is not against guardianship; it is an extension of the argument. Those who are in a position to identify very early on that a child has been trafficked need training if they are to be alert to the situation. There is a need for additional awareness and training of all those who come into contact with children who have been trafficked. We are failing them when we fail to provide assistance from the people they perceive to be on their side.

The Earl of Listowel: My Lords, I agree with the comments of the noble Baroness, Lady Hamwee, as a volunteer who has worked with vulnerable children and alongside those working with vulnerable young people. What a privilege it is to listen to the noble Lord, Lord McColl, who has been a sustained and passionate advocate for these trafficked children; to hear the concerns of the noble Baroness, Lady Massey of Darwen, the chair of the All-Party Parliamentary Group for Children; and to listen to my noble friend, who is the chair of the human trafficking group and whose name escapes me, incredibly.

Baroness Butler-Sloss: Butler-Sloss.

The Earl of Listowel: Thank you so much. That is extraordinary. I do apologise.

Baroness Butler-Sloss: The noble Earl is too young, much too young.

The Earl of Listowel: I re-emphasise the point made by the noble Baroness, Lady Hamwee, that there needs to be training for people working with these vulnerable young people. I am very taken with the notion that there should be volunteer advocates working with them but as a volunteer myself, who has had experience of both very poor support and supervision and very good support and supervision, I suggest that the regulations should be very clear about what sort of supervision, training and support these advocates should receive. That is only fair to volunteers and it will make them much more effective as advocates and supporters of these young people. There is a great dearth of resource in children's services at the moment and the danger is, if regulations are not clear about what the minimum requirements are, there may be a drive to produce the lowest-cost and lowest-quality advocates for these young people. I had only that comment to make. I very much support the amendment.

Baroness Benjamin (LD): My Lords, I, too, support this amendment. Anything we can do to make young people feel worthy is important. Many of these young people are suffering, through no fault of their own, and I wholly support any attempt to make them understand that there are people who care about their well-being, that there is a place to go and that there is some sort of support for them. I hope the Minister will consider these amendments very carefully.

Baroness Howe of Idlicote (CB): My Lords, I cannot think of anybody in this room who would not be in favour of the amendment moved by the noble Lord, Lord McColl. It was brilliantly presented in one of the most compelling speeches I have ever heard. With that in mind, unless anybody is prepared to contradict me by saying that they are not in favour of what they have heard, I hope that we can proceed and hear what the Government will do about this.

Baroness Jones of Whitchurch: I am sorry to delay proceedings further. I want to say a couple of sentences. First, I thank the noble Lord, Lord McColl, for his perseverance on this issue and the extremely powerful case that he has made this afternoon. This idea of independent guardians is becoming an increasingly important theme in our debates on this Bill and it is a model that is gaining more and more credibility. My noble friend made reference to the support of the Joint Committee on Human Rights for the concept and the issue was also identified recently in a Commons Education Committee report on child protection.

In addition to the Scottish examples to which my noble friend has drawn our attention, that report identified that this concept has also been in operation in the Netherlands for some time, and there may well be lessons that we could learn from that. I do not want to rehearse all the arguments but there are very powerful ones why we should consider these sorts of policies. First, it would clearly help the children themselves. We have heard how that might happen in terms of providing quality advice and guidance. Secondly, I should like to think that such a measure would go some way to deterring potential traffickers in the future if they felt that when they trafficked children here, those children would have an alternative authority figure with whom they could associate and be aligned. It would be nice to think that the measure could deter traffickers pursuing their dastardly policies in the future. Thirdly, surely this is an area where early intervention and support could prevent children being drawn into greater social and criminal problems in the longer term. Therefore, there are all sorts of savings to be made if we intervene earlier. I do not want to extend the debate. I again thank the noble Lord and hope that he perseveres with this issue.

4.30 pm

Baroness Northover (LD): My Lords, we share the concerns of my noble friend Lord McColl for the victims of the terrible crime of child trafficking. I pay tribute to his determined and enduring commitment to these children. I am sorry if the noble and learned Baroness, Lady Butler-Sloss, and my noble friend Lord McColl feel that they are being batted away in any sense; they are not and will not be. These debates are extremely important in taking things forward.

At the previous session of this Committee, the failure of some local authorities to fulfil their statutory duties towards these child victims was discussed. We heard, as we have heard again today, some heartrending accounts. I start by emphasising that these failures are absolutely unacceptable. Local authorities should ensure that these very vulnerable children receive the care and

[Baroness Northover]
support that they so desperately need. In fulfilling those duties, a looked-after child who has been trafficked should be allocated a social worker by the local authority, as noble Lords have heard. The social worker should be responsible for planning the care of the child, ensuring that they are safely accommodated and that their welfare is supported.

The social worker should plan to ensure that all the needs of the child are met. They should take particular account of the specific needs of a trafficked child, including planning to prevent the child going missing from care, as the noble and learned Baroness, Lady Butler-Sloss, said, providing safe and secure accommodation and ensuring that the child understands any procedures in which they are involved. Throughout this they should treat the child as a victim of crime.

The child should also be allocated an independent reviewing officer who would, among many responsibilities, ensure that the child is aware of the implications of their immigration and asylum status and that the local authority considers these as part of its plan to meet the child's needs. Further, as noble Lords have said, the child would have the right of access to an independent advocate responsible for accurately representing the child's wishes and feelings. Advocates can support children on all issues, not just their care plan. Social workers have a duty to tell all children about their right to an advocate. Advocates can and do support children of all ages, even the very young children to whom my noble friend referred. The child's needs and interests are best protected when these professionals work well together and fulfil their statutory responsibilities.

Legal status, perhaps unfortunately, is not the point. Local authorities have a statutory duty to assess and meet the needs of trafficked children. The issue is one of practice and, as my noble friend Lady Hamwee pointed out, trying to ensure that what should happen legally actually does happen.

The noble Baroness, Lady Lister, and others mentioned Scotland, and I inquired as to whether this had solved the problem. I understand that the pilot of guardians in Scotland has, thus far, had mixed results. I can reassure the noble Baroness, Lady Jones, that we are keeping in touch with the Scottish Government to see what lessons we can learn from them, but it seems again to come back to practice; even setting the arrangements in place has not cracked it in Scotland.

I realise that my noble friend Lord McColl does not accept this point but we continue to feel that adding another person in the form of a child trafficking guardian to those already working in the interests of the child could add another layer of complexity. There could be a real danger of confusion about the role of social workers, independent reviewing officers and the new guardians. The current system is clear about who is responsible for taking decisions about how best to support the young person. However, we accept, as I said on Monday, that this is clearly not working out in practice as it should do. Noble Lords will know that the statutory framework includes specific duties to consider the particular needs of the trafficked child and, for example, keeping the child safe from their traffickers.

From November, every Ofsted inspection report must say how local authorities are doing in reducing the number of, and supporting, children who go missing. It is therefore vital to focus on the reasons for the failure of some local authorities to provide adequate support to trafficked children, rather than perhaps to conceal those failures below further operational layers.

Noble Lords have made reference to the *Still at Risk* report. They may have noted that several of its recommendations highlighted that all agencies need to implement properly statutory and practice guidance. The structures already exist to provide the support required by trafficked children if the relevant authorities put them into effect. The report showed that effective multi-agency working is an essential part of providing the right support.

I said on Monday that we have already put in place a major programme of reform to transform the care system. We want to see stable and permanent placements, high-quality education and health support, and better support for care leavers as they transition to adulthood. We will ensure that, as we implement these programmes, we will take account of the particular needs of trafficked children. As I said on Monday, we have already published revisions to the statutory guidance on missing children, which strengthen advice on meeting the needs of child victims of trafficking. However, I repeat that we recognise the strength of feeling and the strong arguments around this issue. As I said on that occasion, we would like to take this issue away and I invite further discussions to try to take this forward, drawing on every noble Lord's expertise. In the light of that, I hope that my noble friend will be willing to withdraw his amendment.

Baroness Massey of Darwen: Perhaps I may ask two questions. First, I cannot accept that a guardian or advocate would add an extra layer to the system in supporting trafficked children. The guardian or advocate is supposed to link the layers together and support the child. Secondly, will the Government be talking to Barnardo's, the NSPCC, the Children's Society, the University of Bedfordshire and ECPAT in order to hear first hand the experiences of dealing with trafficked children?

Baroness Northover: I heard what noble Lords said about feeling that the guardian would cut through those layers; my noble friend Lord McColl put that case extremely cogently. I should like to reassure noble Lords that we are seeking to tackle this problem as effectively as possible. In some ways, it is perhaps slightly dispiriting to hear that it has not been cracked by the Scottish model. It looks to me as though we need to look further into why this is not working. That is why it is important that we meet up for a discussion, and it is vital that the organisations that the noble Baroness referred to feed in their expertise so that we can best take this forward.

Lord McColl of Dulwich: I thank the Minister very much for her very careful speech, and I am reassured that she is going to have a lot of discussions. I hope that we can all get together to talk about this issue in some detail. She mentioned that the social worker

should be the key. If it was one social worker who was responsible for one child and stayed with that child, that would be fine, but the problem is that the children have umpteen social workers. They never know who is coming next and they then have to repeat their story over and over again.

I certainly do not accept that this proposal will add another layer of bureaucracy to the organisation. We have already had an 18-month delay over this and I can see that, with the existing bureaucracy, it will be another 18 months before something effective is done. Meanwhile, hundreds of children are going to be in jeopardy. Therefore, I welcome what the Minister says and look forward to meeting her and all those who have been speaking on this issue and who have done so much work in this field. I thank everyone for their contributions today. I beg leave to withdraw the amendment.

Amendment 42 withdrawn.

Amendment 43

Moved by ***Baroness Howarth of Breckland***

43: After Clause 9, insert the following new Clause—

"Privately fostered children

In section 66 of the Children Act 1989 (privately fostered children), at the end of subsection (1) insert—

"(c) the relative exemption does not apply for foreign national children whose parents are not residing in England or Wales"."

Baroness Howarth of Breckland (CB): My Lords, Amendment 43 concerns another very specific group of children—those who are privately fostered but who come from overseas. In some ways, this is a probing amendment to see whether the Government can revisit the regulations around these privately fostered children.

Currently, the number of children in this group in the UK is unknown. The majority will have arrived on visitor visas and will have overstayed. Most will be attending school and will be registered with health services. The adults caring for them have a duty to notify their local authority that they are caring for the child but, as the child is a visa-overstayer, no one does it. Given their other pressures, the majority of local authorities do not proactively look for these children, and schools do not check the visa status of children arriving mid-year or joining in years two to six.

The close relative exemption includes all relatives described under the Children Act 1989 and it exempts them from assessment by the local authority. The issue is that all carers claim to be an aunt or uncle. That is impossible to verify in most cases, and local authorities accept this as it reduces their workload. We should keep in our hearts Victoria Climbié as we think about this issue because that case, too, involved direct relatives.

The child protection issue is fairly straightforward. These children are in the UK without anyone who has legal parental responsibility. No one has overseen their placements and no one has asked about the child's wishes or feelings. The real crunch comes when these children reach 18, having been brought up here from childhood and English being their one language. They are probably on their way to further education. One young person for whom I was asked to advocate by Voice was in this exact position. Only when preparing to go to college did he find out that he was facing the alternative: deportation as an illegal immigrant. There is a range of these children. It is in their best interests to know their immigration status and to determine their future as soon as it is known, rather than when they reach 18. The organisation Children and Families Across Borders believes that the Home Office will accept this amendment.

There are real practice issues. We have spoken often about practice and its difficulties but in this matter, while the border agency and the children's services are both governmental agencies and should be working together, the organisation has found that there tends to be little if any exchange between the two at either policy or working level. There seems to be no sense of corporate responsibility within government for the children who have reached British soil. The children's services focus on the children's well-being and rarely take the step needed to address durable, long-term solutions. They look at it in the narrow context of pathway planning, which is good for other children who are from this country.

4.45 pm

Furthermore, valuable information about the child, which could contribute to a comprehensive review of a durable solution in his or her best interests, is often withheld by social workers on the basis that either divulging the information could undermine the relationship of trust developed with the child, or a perception that UKBA's treatment of such cases is simply driven by immigration controls.

Decisions about a child returning to join family members in a third country should be implemented within a specific timeframe once all safeguards are confirmed to be in place. There is a useful model for this from 20 years ago, related to the return of Vietnamese boat people. I have given documents to officials to save time here; I am sure that your Lordships would not want me to be reading the whole of them in this Committee. Alternatively, there should be a decision for a child to remain indefinitely in the UK, followed by prompt child welfare assessment and clarification of the child's immigration status. The child could then continue in the private fostering situation with proper security and, probably, without further intervention from social services. This may indeed need legislation and I beg to move.

The Earl of Listowel: My Lords, I want to ask a brief question of the Minister, related to this matter. My noble friend alluded to the terrible case of Victoria Climbié, in which Victoria was privately fostered. The noble Lord, Lord Laming, who was charged by the Government to publish an inquiry into her death, was very concerned about a lack of awareness of private fostering—about how we can register private fosterers and make it safer for children to be in that position of being cared for by an auntie and uncle, while not being registered as a child in care.

[The Earl of Listowel]

There has been work in the past 10 years to normalise private fostering and raise awareness about it. I know that the British Association for Adoption and Fostering has done work to raise awareness among private foster carers so that they should come forward and, I believe, give their names to be registered by the local authority. I would be grateful to know from the Minister what progress has been made in recent years in terms of the numbers of those private fostering carers coming forward. Perhaps he could write to me, along with any other information that he can send me on what is being done to reassure us about the safety of children in private fostered arrangements. I hope that is helpful.

The Countess of Mar (CB): My Lords, I support my noble friend Lady Howarth of Breckland. For many years, I was a lay member of the immigration tribunal and I remember seeing a number of young people go through the awful process of asylum appeals when they got to the age of 18. They did not understand what was going on. In many cases, we allowed them because they had been here for so long and had become used to the country. It would have helped them enormously if they had had support earlier in their lives, as my noble friend is suggesting.

Baroness Northover: My Lords, here we are addressing another group of potentially vulnerable children, as the noble Baroness, Lady Howarth, pointed out. They are foreign-national children who are living in this country while their parents reside elsewhere. We recognise that the amendment seeks to improve safeguards for children privately fostered from abroad. We sympathise with that intention.

We fully accept that local authorities should check on private fostering arrangements when children are living apart from their close family, and current legislation provides for this. We recognise that it is sometimes difficult to establish if a family relationship is genuine, as the noble Baroness, Lady Howarth, made very clear, especially where a carer is falsely claiming to be a close relative to avoid the requirement to notify the local authority of a private fostering arrangement. This raises a potential safeguarding issue.

However, we are not convinced that the way forward is to apply the private fostering arrangements to all foreign national children who live here without their parents. This would extend the arrangements to a large number of cases where children are safely looked after by close relatives. However, we agree that this is an important issue, as children from abroad are in a particularly vulnerable position. It remains crucial that professionals who work with children from abroad, including border staff, schools, health professionals, housing officers, et cetera, can spot private fostering when they see it and notify the relevant local authority.

The current private fostering guidance asks local authorities to undertake awareness-raising activities with agencies, such as schools, to enable professionals to encourage private foster carers and parents to notify the local authority. Front-line professionals are also encouraged to notify the local authority of a private fostering arrangement that comes to their attention where they are not satisfied that the local authority has been, or will be, notified of the arrangement, so that the local authority can check that the arrangement is safe and suitable.

We are reviewing the school admissions guidance for children from abroad and are aiming to publish a revised version in January 2014. We will also shortly be publishing revised guidance on safeguarding in schools. The new guidance will specify schools' statutory duties in respect of safeguarding, provide guidance on roles and responsibilities, including making referrals to child protection services, and indicate where to find up-to-date guidance on particular issues.

In addition, we have a project under way looking at the requirements on local authorities and the role of other agencies and services with a view to focusing efforts and strengthening the response to children most at risk. We will be talking to relevant partners and agencies, such as the Home Office, the British Association for Adoption and Fostering, Children and Families Across Borders, Ofsted and local authorities, to identify what targeted action might be taken to improve practice in local areas. There are a number of issues that we are looking at, and I am happy to share them with the noble Baroness.

An important issue is whether it is better to resolve the immigration status of children and return them to their home country as soon as possible after their arrival in the UK, rather than leave it until they reach the age of 18, by which time their ties with their home country have been greatly reduced. The current practice is to consider the needs of each child on a case-by-case basis and carry out an assessment of what is in the child's best interests. The child and their social worker have a central role in this assessment, and contributions are usually also sought from other relevant agencies.

We have some sympathy with the argument about early return but, referring to other debates we have had, we need to be aware that many of these children may be vulnerable and have arrived in the United Kingdom having suffered very difficult and sometimes traumatic experiences. It is often the case that their parents cannot be traced or that the reception arrangements in the country to which they would be returning might be inadequate. This has meant that in practice, with the exception of transfers to other European Union countries, the UK rarely enforces the return of unaccompanied children to any country. The important issue is to try to work out what is in the best interests of the child.

I would be happy to provide any more details on this to the noble Baroness. I welcome her expertise feeding in as we consider this. I hope that in the mean time she will be content to withdraw her amendment.

Baroness Howarth of Breckland: My Lords, I am grateful for the noble Baroness's full reply. The only point that I would pick up is that sometimes social workers will decide to allow children to remain indefinitely without taking action, simply because the social worker is anxious that if they do anything the child will immediately be deported. It is that working together between all the agencies and organisations, including education and the Home Office, and making sure that

the child's welfare is at the centre of any decision, that needs to be taken forward. Otherwise, people make decisions that they think are in the best interests of the child but, in the long term, turn out to be disastrous for their growth. I beg leave to withdraw the amendment.

Amendment 43 withdrawn.

Amendment 44

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

44: After Clause 9, insert the following new Clause—

"Support for family and friends carers when children are not looked after

(1) Each local authority must make arrangements for the provision within their area of family and friends care support services, including—

(a) counselling, advice and information; and

(b) such other services as are prescribed, in relation to family and friends care.

(2) The power to make regulations under subsection (1)(b) is to be exercised so as to secure that local authorities provide financial support.

(3) At the request of any of the following persons—

(a) a relative, wider family member or friend caring for a child in any of the circumstances (hereinafter referred to as C) set out in subsection (4) below;

(b) a parent or other person with parental responsibility; or

(c) a child living with C in circumstances set out in subsection (4) below; or

(d) any other person who falls within a prescribed description, a local authority must carry out an assessment of that person's needs for family and friends care support services.

(4) The circumstances referred to in subsection (3)(a) and (c) are—

(a) the child comes to live with C as a result of enquiries or plans made under section 47 of this Act;

(b) the child comes to live with C following an investigation under section 37 of this Act;

(c) C has been granted a residence order or a child arrangements order to avoid the child being looked after, within care proceedings on the child or following the accommodation of a child;

(d) there is professional evidence of the impairment of the parents' ability to care for the child; or

(e) the parent is dead or in prison.

(5) A local authority may, at the request of any other person, carry out an assessment of that person's needs for family and friends care support services.

(6) Where, as a result of an assessment, a local authority decide that a person has needs for family and friends care support services, they must then decide whether to provide any such services to that person.

(7) If—

(a) a local authority decide to provide any family and friends care support services to a person, and

(b) the circumstances fall within a prescribed description, the local authority must prepare a plan in accordance with which family and friends care support services are to be provided to him, and keep the plan under review.

(8) The Secretary of State may by regulations make provision about assessments, preparing and reviewing plans, the provision of family and friends care support services in accordance with plans and reviewing the provision of family and friends care support services.

(9) The regulations may in particular make provision—

(a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;

(b) about the way in which a plan is to be prepared;

(c) about the way in which, and the time at which, a plan or the provision of family and friends care support services is to be reviewed;

(d) about the considerations to which a local authority are to have regard in carrying out an assessment or review or preparing a plan;

(e) as to the circumstances in which a local authority may provide family and friends care support services subject to conditions (including conditions as to payment for the support or the repayment of financial support);

(f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met (including the recovery of any financial support provided);

(g) as to the circumstances n which this section may apply to a local authority in respect of persons who are outside that local authority's area;

(h) as to the circumstances in which a local authority may recover from another local authority the expenses of providing family and friends care support services to any person.

(10) A local authority may provide family and friends care support services (or any part of them) by securing their provision by—

(a) another local authority; or

(b) a person within a description prescribed in regulations of persons who may provide family and friends care support services, and may also arrange with any such authority or person for that other authority or that person to carry out the local authority's functions in relation to assessments under this section.

(11) A local authority may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

(12) Section 27 (co-operation between authorities) applies in relation to the exercise of functions of a local authority under this section as it applies in relation to the exercise of functions of a local authority under Part 3."

Baroness Massey of Darwen: My Lords, my amendments in this group address the issue of kinship care. Amendment 44 concerns:

"Support for family and friends carers when children are not looked after".

Amendment 45 addresses carers' allowances and financial support. I should ask for the Committee's patience in my speaking to these amendments; some of these issues are rather complex and all are important.

Both amendments seek greater support for family and friends carers. Last week, I described such people as heroes—and so they are. They take over the care of children, very often in the direst circumstances, and lack the support that they need and deserve. I am grateful to the Kinship Care Alliance, which includes many organisations concerned with children's families' rights, for its tireless and highly professional support for family and friends carers, and for its determination to seek a better deal.

The House has discussed family and friends carers many times before. Some colleagues may remember the discussions, which have notably taken place in Bills concerned with welfare. Ministers from both sides of the House have been sympathetic, and some adjustments

[Baroness Massey of Darwen]
to the situation have been made, but not enough. I used to meet kinship carers regularly when I chaired the National Treatment Agency for Substance Misuse, because many of the carers looked after children of a relative who had a drug or alcohol problem. I became aware of what a brilliant job these carers do, often without or with very little support, and often to the detriment of their own physical, emotional and mental health, particularly if they are older carers such as grandparents. Kinship carers take over the care of young relatives because they want the best for them, often in an emergency, such as the sudden death of a child's parent. I remember a grandmother in a London borough whose daughter died suddenly late at night, and who took over caring for three children aged between one and 10 in a one-bedroom flat. "You know what they call us?", she said, "The midnight grannies".

Two key issues underline what I have to say. One is that the outcomes for children who are looked after by a relative are better than those for children looked after outside the family. Secondly, such care saves an enormous amount of money. The cost of a place in independent foster care is £40,000, and the average cost to the state of care proceedings is more than £25,000. However, research indicates that most family and friends care arrangements—86%—are initiated by carers themselves, rather than social workers seeking them out.

An estimated 300,000 children are being raised by relatives and friends. Only an estimated 6% of children who are raised in family and friends care are looked after by the local authority and placed with approved foster carers. By far the majority live with their relatives and friends outside this care system, either with the parents' agreement, or under a residence order or special guardianship order granted by the courts. Despite the lack of support, children in the care of family and friends do better in terms of attachment. They have a sense of belonging, a sense of safety and the confidence that they will not be moved about. This results in better educational outcomes and fewer behavioural problems. There is a greater likelihood of an ethnic match—88% as opposed to 78%.

5 pm

Kinship care may well be the best thing for children where possible and it is consistent with their rights under the European convention to support family life. It is also an increasingly practical option for children unable to live with their parents, given the record numbers of children-in-care proceedings and the severe shortage of unrelated foster carers, which result in many children in care experiencing temporary placements, being split up from siblings and having to move from their school and family networks. Yet many kinship carers are under severe strain. In a recent survey, 95% said that they experienced at least one unmet need for support and most mentioned several. More worryingly, carers who were raising the most difficult children were receiving no support at all.

According to the experience of the Kinship Care Alliance in advising thousands of families and friend carers every year, this lack of support is due to three major factors. First, they are not entitled to local authority financial or other support for these children—for example, help with contact arrangements, bereavement counselling or challenging behaviour. If a child is looked after by a local authority, the carer must be approved as a foster carer and they are entitled to a fostering allowance. However, 94% of kinship carers are not in that category. If a child is not looked after by a local authority, then financial support is discretionary. Yet carers often face enormous costs—for example, the need to give up a job, to adjust their homes, to buy extra equipment and clothing for the children, as well as possibly some childcare. I have also heard of cases where kinship carers have had to pay enormous sums of money in legal bills to secure the child's future with them. Although there is a duty on local authorities to establish a special guardianship support service, similar to adoption support, this does not give an individual carer the right to a specific service. Moreover, there is no equivalent support service for children in kinship care under a residence order or no order.

The Deputy Chairman of Committees (Lord Geddes) (Con): My Lords, with apologies to the noble Baroness, a Division has been called in the Chamber. The Grand Committee stands adjourned for 10 minutes, to resume at 5.12 pm.

5.02 pm

Sitting suspended for a Division in the House.

5.12 pm

The Deputy Chairman of Committees (Lord Geddes): My Lords, it is now 5.12 pm. I apologise again to the noble Baroness for interrupting her mid-flow. The Grand Committee is now resumed.

Baroness Massey of Darwen: It was quite a welcome break in this long speech. I am moving Amendment 44 and speaking to Amendment 45. They support financial and other support to family and friends carers. I was summarising briefly the benefits to children of such care and the hardships suffered by family and friends carers. Although there is a duty on local authorities to establish a special guardianship support service, similar to adoption support, this does not give an individual carer the right to a specific service. Moreover, there is no equivalent support service for children in kinship care under a residence order or no order. A survey of family and friends carers shows that those with special guardianship orders are the most satisfied with the legal order compared to those who do not have such orders.

Secondly in the list I started earlier, despite the Government's 2011 guidance on family and friends care, most local authorities are not proactive in supporting family and friends care. There is no dedicated family and friends care team, for example, in most local authorities. This means that the carers and children are dealt with—here we go again—by different teams in children's services, who may not have specific expertise.

The third factor is that there are no official statistics published on the number of children in family and friends care either nationally or locally. One analysis

by the University of Bristol excludes friends care, for example. Local authorities do not routinely collect such data so it is difficult to see how they can design and finance such services. The 2011 guidance is clear: it requires all English local authorities to have a family and friends care policy stating what support they would provide by September 2011. Sadly, much later after that deadline, more than 30% of local authorities still have not published a family and friends care policy. The guidance does not change the legal position but while local authorities have to provide support for looked-after children placed with family and friends carers, which is 6% of children, they do not have to provide support for the 94% of children in family and friends care who are classified as not looked after.

I am aware that, in the climate of financial restrictions, local authorities are seeking to reduce service provision and that non-statutory services are being cut. My Amendment 44, which mirrors the special guardianship support service required, seeks to redress the shortcoming by requiring local authorities to provide support to meet the identified needs of children being raised by family or friends under a private arrangement or residence order. The circumstances as to when this would apply restrict the support to children who would otherwise be in the care system because they are at risk or their parents are incapacitated, dead or in prison. I hope the Minister will be able to address these concerns and meet with the Kinship Care Alliance to discuss the urgency of this situation.

Amendment 45 seeks to insert a new Section 77A into the Social Security Contributions and Benefits Act 1992. It aims to ensure that family and friends carers receive a basic financial allowance from central government to support them in raising a child who cannot remain with their parents and would otherwise be in the care system. Support would be restricted to cases of children whose parents are incapacitated, dead or in prison. The amendment would provide the mechanism for local authorities to provide discretionary support to meet more effectively the assessed needs of children in family and friends care under residence orders or where there is no order at all. However, this does not address the additional costs to family and friends carers of raising a child who is not their own.

Of course, the legal liability for maintaining children lies with the parents at all times, even if their children are cared for by someone else. At no point does legal liability transfer to family and friends carers, except on adoption, but these carers often have existing financial responsibilities—for example, caring for an elderly relative or their own existing children.

They may apply for child benefit, although there are sometimes problems in transferring this from the parents to the carer. They may apply for tax credits according to their means, and an allowance for the child where they are in receipt of income support. However, there is no recognition in the benefits system of the additional costs of raising a child who is not their own. Caring for a child, according to the Fostering Network, is calculated to be 50% higher than the cost of caring for a birth child. This is partly due to emotional distress in the children, maintaining contact with parents and other family members and engaging with social workers and health and education staff. This is why foster carers receive specific allowances from local authorities, paid at substantially higher rates than state benefits and tax credits.

Briefly, there are four key financial issues for family and friends carers in raising a child outside the looked-after system. First, there is the immediate cost of a child coming to live with a carer, often, as I said earlier, in an unplanned or emergency situation. Secondly, there are the costs of applying for a legal order to provide the child with security and permanence. Thirdly, there is the lost income resulting from the carer reducing their working hours, leaving paid work, forgoing career opportunities or losing pension rights. Finally, there are the actual costs of raising a child, which may include a larger home, higher utility bills and so on.

When special guardianship legislation was passed, it was envisaged that many foster carers would apply for special guardianship orders for older children in their care. There have been cases of successful orders in such situations but many foster carers are reluctant to apply for such orders because they fear that the financial support received would be inadequate, as compared to the mandatory support they and the child would receive as foster carers. It is likely that more foster carers would apply for special guardianship orders if they could be guaranteed continued financial support. The regulations should be amended accordingly. I hope that these two amendments will be favourably received by the Government, so that family and friends carers get a much better deal.

Baroness Butler-Sloss: My Lords, I support these two amendments. I am either patron or president of the Grandparents' Association and I have a particular example of a friend of mine, who took over the care of her goddaughter at very short notice. She would otherwise have gone into care. The social workers encouraged my friend to keep the child and to take a residence order. Eventually she got a special guardianship order, which she has at the moment, but once she got the residence order she discovered that the social workers were basically saying, "That's fine; now we don't have to pay you, which is a very good reason why we didn't want you to be a foster mother". This is not as it should be.

It is not unusual for this to happen. Family and friends who are carers are quite often treated this way. Because they are prepared to care for one of their own family or somebody close to them, it does not become the requirement of the local authority to give them any support. I battled for this friend of mine to have some support and they gave her a small amount as a sort of honorarium. It really was very small indeed. It happens that some quite young grandparents or other carers, having achieved a good position in a job and a comfortable lifestyle, suddenly find themselves, after a daughter or daughter-in-law dies, taking over the care of a child or children at short notice. Their standard of living drops dramatically, often because they can no longer keep their job. They are therefore losing their comfortable lifestyle. Not only do they have an extremely exhausting time caring for their grandchildren, who of course they love dearly. It is also very trying because

[Baroness Butler-Sloss]
they find themselves short of money in a way that they had not been when they were ordinary grandparents and out at work.

It is a real need that the noble Baroness, Lady Massey, has set out with such care and the Government really should be looking at it, because in the majority of cases local authorities will not pay if they do not have to. Many grandparents in the association with which I am connected are in the very position that I have just described.

Lord Northbourne (CB): My Lords, I support the noble Baroness, Lady Massey, and my noble and learned friend Lady Butler-Sloss on this issue. I declare an interest as I am also a member of the Grandparents' Association. One point that my noble and learned friend did not make is that there is a history of some social workers going round at 2 am with little Johnny and saying, "Are you prepared to take him in? We are otherwise going to take him into care". Of course the grandparent takes him in and then she has lost her money.

Baroness Drake (Lab): My Lords, I support my noble friend Lady Massey's amendments because it is worth restating that we are addressing here a community of an estimated 300,000 children. It is not a minor group of children; this is a major group for whom friend and family carers are caring. They are being raised by these carers, in many instances as an alternative to being in the care system. In most instances, that produces better outcomes for these children than entering the care system and with huge savings to the state. Yet many of them get too little help and too little support. Therefore, on the one hand as a society we depend on them to protect many children, but we reciprocate with such limited support.

Research reveals that a minority of kinship carers receive financial or practical support from their local authority. Only the foster carers—about 5% of all kinship carers—are entitled to financial support, as my noble friend said. For other carers, the support is discretionary. Yet kinship and family and friends care is the most common form of permanency for children who cannot live with their birth families. Research from Joan Hunt at the University of Oxford shows that there is no relationship between a child's needs and whether they receive support from the local authority, and that those with the highest needs may in fact be less likely to get any help. This disparity between those needing support and those getting support is reinforced by research findings, which suggest that most family and friends care arrangements—86%—are initiated by the carers themselves rather than the social workers, so giving rise to some of the situations that the noble and learned Baroness referred to a moment ago.

However, it makes no sense at all that such vulnerable children and their carers should face such a lottery when it comes to support. Kinship carers have done the right thing by taking in a child who cannot live at home but then they are often left to struggle alone. However, the children for whom they care have similar high needs to those of the children looked after by the local authority. As a survey conducted by Grandparents Plus found, 45% of kinship carers were looking after children who had experienced abuse or neglect, 44% cared for children who had experienced parental drug or alcohol misuse, 22% were in kinship care because of parental illness, mental illness or disability, and 21% because of domestic violence. Therefore, despite the importance of these placements and the experience of the children, they are often left without adequate support, many under great strain.

Notwithstanding the existing statutory guidance on providing support for carers, to which my noble friend Lady Massey referred in great detail, I reiterate that the legal position remains that, while local authorities have to provide support for looked-after children, they do not have to support the remaining vast majority of children in family and friends care who are not looked after. These amendments would begin to address that failure by putting the onus on local authorities to provide support to meet the identified needs of children who cannot live with their parents and would otherwise be in care.

Research also reveals that many of these grandparents and kinship carers are living in poverty or on low incomes. Analysis of census micro-data from 2001 found that 71% of children in kinship care were experiencing multiple deprivations. I can put it no better than a powerful quotation from a study called *The Poor Relations?* By Elaine Farmer, Julie Selwyn and others from Bristol University:

> "We found that many informal kinship carers lived in grinding poverty, which wore them down and reduced their quality of life. Yet, this was often a consequence of caring for the kinship children—many had given up good jobs to take the children … or in the case of retired carers, had only their pensions to live on … Most carers were under significant strain bringing up the kinship children on low incomes, often when they themselves were unwell".

Yet these carers face significant additional costs, as eloquently detailed by my noble friend. An example is the widowed grandmother living on a pension raising a six year-old grandson due to the mother's drug and alcohol difficulties, quoted in the Grandparents Plus report *Too Old to Care*:

> "All my child benefit, £20 a week, goes on my bus fares and his bus fares to get him to school and back. I did say to him about moving schools but he just got so upset. He's had enough people in his little life so I just keep taking him to school".

5.30 pm

The Fostering Network found that extra costs are rooted partly in the emotional distress the children have experienced, the challenging behaviour, maintaining contact with family members and engaging with social workers, health and education staff. Those costs are faced by family and friendship carers too, but an overwhelming majority—94%—of family and friend carers are not in the category entitled to financial support. For them it is discretionary, at a time when most local authorities are reducing service provision. Carers are entitled to apply for child benefit and tax credits and for an allowance for the child if they are in receipt of income support, but I stress again the point made by my noble friend that there is no recognition in the benefits system of the additional costs of raising

a child who is not your own. Such carers may well be impacted by the benefit cap. Many will have lost their jobs, an issue that we shall return to on Amendment 267.

This amendment would enable family and friends carers to receive a basic financial allowance to support them to raise a child who cannot remain with his or her parents and who would otherwise be in the care system. I was reflecting on a point that my noble friend Lady Massey made. She said that some of these people are heroes. I was trying to think of a Churchillian quote that captured that, and I came to the view that so many of these carers are the people who have little, give the most and end up receiving the least.

The Earl of Listowel: I rise briefly to support these amendments and to make three points. First, above all, children who have experienced trauma—indeed, all children—need parents who stick with them through their lives. Children who have experienced abuse over periods of time need carers who stick with them over the years and who are reliable and consistent.

Last night, I was at a meeting and met psychiatrists from all over the world who have just published a book on the mental health of looked-after children. The final point in the editor's chapter in the book was that he encouraged all clinicians always to remember that the most important thing to help these children recover from past trauma is to enable them to have relationships with people who care about them and stick with them. Family relationships—long-term committed relationships—are what they need. If they cannot find that at that particular time in their lives then, as a clinician, you need to equip them to be able to make and keep those kinds of relationships. It seems to me that that is much more likely to happen in these kinship care models than in foster care, although it often happens there too.

Secondly, good social care interventions can make a difference. The most popular intervention that foster carers talk to me about is support to understand how they manage the behaviour of their young people. All young people can, at different times in their lives, be difficult to manage, but young people who have been traumatised, abused or neglected will often display very difficult behaviours. In fact, in 2004 a report from the Office for National Statistics on the mental health of looked-after children highlighted that those in foster care had, I think, a 40% rate of mental disorder compared with, I think, a 5% rate in the general population. The rate for those in residential care was 70% or so. A very high percentage of those mental disorders are conduct disorders, things such as troubling behaviours from young people. Carers need support to understand and manage those behaviours, and they tell me they really appreciate it.

They also need to be connected with other carers with the same experience. When foster carers are helped to connect regularly with other foster carers in the same position and the same job, they value being part of a community of carers and being able to share experience and learn from it.

Finally, I take this opportunity to highlight the letter sent to me by the noble Lord, Lord Nash, regarding the recruitment and retention of child and family social workers. It is key to this area, to trafficked children and to children returning from care. In this brief debate, we have heard examples of poor and variable practice in child and family social work. I know that several noble Lords trained and practised as social workers. It is enormously encouraging that, in recent years, in the previous Government and in this Government, there has been a real commitment to raising the professional status of child and family social work—to raising entry requirements and training standards. In his letter, among several other things, the Minister drew my attention to a review by Sir Martin Narey commissioned by the Government into the initial training of social workers, which is being published in January, and to new data-collecting on social workers on the front line in local authorities, so that we will have a better understanding of how well we are retaining the new social workers that we are recruiting. I draw that to your Lordships' attention because I think it is important.

I also want to commend the Government for taking this consistent stance towards social work, which in the past has been far too neglected. One of the key ingredients for getting better outcomes for children, whether they are in kinship, foster or other settings, is to get support from the right professionals, and I hope we are moving in that direction now. I strongly support these amendments.

Lord Ponsonby of Shulbrede (Lab): My Lords, I wanted to speak briefly in support of these amendments. My noble friend Lady Massey has set out the framework and how important it is statistically, but I was sitting as a family magistrate only last week and I thought it might be interesting for the Committee to hear the decisions that we were invited to make as a court. The scenario was of a two year-old boy in a successful fostering arrangement. His uncle had come forward with his wife. They already had three children and they were willing to take on the boy. That would put them in the situation of having four children under the age of six in a two-bedroom flat in London. All parties supported the arrangement that was to be made by the court and the decisions that we were invited to make as a court were to finalise the financial arrangements between the local authority and the carers. There was a bit of brokering and toing and froing on what those payments were to be. As far as I know, they were discretionary but nevertheless they were offered. As I say, it was a bit of a haggle but a figure was agreed for the kinship arrangements to go ahead.

The second decision we were asked to make was whether to put in place a special guardianship order. This was opposed by the local authority but we decided to put it in place in any case, very much for the reasons that my noble friend has said. We believed that it would help the carers to have the support of the local authority for the first 12 months. That was no reflection on their ability to be good parents—in fact, we were sure they would be—but we wanted to help them. So we went against the local authority's wishes on that particular decision. The other decision we made was to put in place the contact arrangements for the mother. The mother was a recovering drug addict. She was in

[Lord Ponsonby of Shulbrede]
court and we wished her well. We arranged that she would have contact on a yearly basis and that can be reviewed in due course.

Another issue that we were invited to address was the housing arrangements of this family. As I said, they would have four children in a two-bedroom flat. There was really very little we could do about that other than include a sympathetic paragraph in the judgment, urging local authorities to review their situation sympathetically. Realistically, they were looking at a two or three-year wait for a transfer. Nevertheless, that was something we put in the judgment. The final thing we put in, which we thought about very carefully, were the transfer arrangements. As I said, this particular little boy had been in a successful fostering arrangement where he had blossomed for two years and now he was moving to another arrangement. Obviously, however well-meaning everyone was, it would be a difficult transition arrangement for the boy.

The point that I wanted to make is that all the parties supported this. The local authorities put extra money in and the mother agreed to the arrangement, even though she was losing her boy and the kinship carers would have to take the child on. This is a good solution for all concerned, and if it can be put on a more statutorily substantial footing, I think that that will be to the benefit of all concerned.

Baroness Northover: My Lords, I thank the noble Baroness, Lady Massey, for her amendments, which cover support and services for family and friends carers. I commend her for the motivation behind the amendments.

We fully recognise the valuable contribution made by family and friends in caring for children who cannot live with their parents. We owe them a great deal, as the noble Baroness so eloquently showed. We have heard a great deal about the potential benefits of family and friends carers not only from the noble Baroness, Lady Massey, but from the noble and learned Baroness, Lady Butler-Sloss, the noble Lord, Lord Northbourne, the noble Baroness, Lady Drake, and the noble Lord, Lord Ponsonby.

I found myself thinking that sometimes women like me are described as the "sandwich generation". We look after our children and our parents, but if our children then come back and bring their children for us to look after, that perhaps makes us a double-decker sandwich generation. I hope that my children do not do that.

Noble Lords will be aware that family and friends care, or kinship care, covers a wide range of legal arrangements and, where appropriate, as we have heard, assessments are already in place for putting in the appropriate financial or practical supports. The Children and Young Persons Act 2008 amended Section 17 of the Children Act 1989 so that local authorities could provide regular and long-term financial payments to families caring for children where they judged this to be appropriate. This provision, passed under the previous Government and made discretionary, came into force in April 2011.

In order to clarify the role of local authorities, the Government released statutory guidance on family and friends care, and this also came into force in April 2011. It aims to ensure that children and young people receive the support that they and their carers need to safeguard and promote their welfare.

We are aware that family and friends carers often struggle, as we have heard, to obtain information that will assist them in their caring role, particularly when they have taken on the care of a child in an emergency. That is why the family and friends statutory guidance makes it clear that local authorities have a duty to ensure that their family and friends policy supports the promotion of good information about the full range of services for children, young people and families in the area and highlights the availability of advice from independent organisations.

However, we are aware that the quality and quantity of local authority policies in this area are not at the level they should be. That is why we currently have a programme of work to reduce the variation in practice within and across local authorities. This includes sector learning days for local authorities that will support the development of local policies and guidance as well as clarify the primary legislation and how it is being implemented.

I thank the noble Earl, Lord Listowel, for commending this Government and the previous Government for their support for the vital social work profession.

It is also very important that family and friends carers understand what support services they are entitled to, so the department will be developing an information resource containing the basic facts, entitlements, services and advice that are available to them. This resource will not only increase the knowledge base of carers but will raise awareness of front-line practitioners, such as GPs, and those in education and childcare settings, who are often the first point of contact for new family and friends carers.

5.45 pm

The new Ofsted framework, which I referred to in the last group of amendments, will include a new focus on family and friends carers. One of the criteria to be judged as good includes showing that the recruitment, assessment, training, support, supervision, review and retention of foster carers, including kinship carers, connected persons and, as appropriate, special guardians ensures that families approved are safe and sufficient in number to care for children and young people with a wide range of needs.

The noble Baroness, Lady Massey, asked if I would be happy to meet the Kinship Care Alliance. Certainly I or the relevant Minister within the department will be happy to do that. I would like to thank it, through the noble Baroness, because much of the revised statutory guidance on family and friends carers was based on its suggestions.

I hope that I have given noble Lords sufficient reassurance that the Government are committed to and working towards supporting family and friends carers to a greater extent than has been the case until now. I hope that the noble Baroness, Lady Massey, will be willing to withdraw her amendment.

Baroness Massey of Darwen: I thank the Minister for her response. The case has been made by all the speakers, and I thank those who have given of their expertise today for that.

I shall make a few comments. I am hearing about a great deal of guidance and information packs coming out but not about what local authorities must do rather than what they should do. I want to hear what they must do. I return to the United Nations Convention on the Rights of the Child, under which the welfare of the child is paramount. Clearly in some of the cases we have heard today, the welfare of the child is not paramount. Local authorities do not need information packs; they need the will to support these vulnerable families and children.

I will look at the Ofsted report if the noble Baroness can point me to it. It sounds like an interesting breakthrough. I was involved in the legislation that the noble Baroness mentioned earlier. We managed to get one or two little chinks, but we did not get far enough. I hope that we might get further with these amendments. It is quite clear that there is a lack of local authority support to family and friends carers. They should have teams or individuals specifically to support such carers, particularly when they are providing stability for children, often in an emergency, as we have heard. The emotional and educational outcomes are better for children in family and friends care.

I am happy that the noble Baroness will meet those of us who are interested and the family and friends care network so that we can look at this issue again and try to put some steel into it. It is not only children who will suffer; family and friends carers will also suffer because they do not have the money or the support for the magnificent job they are doing. I beg to withdraw the amendment.

Amendment 44 withdrawn.

Amendments 45 to 45C not moved.

Clause 10: Family mediation information and assessment meetings

Amendment 46

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

46: Clause 10, page 9, line 23, leave out "mediation"

Baroness Butler-Sloss: My Lords, I shall speak also to Amendments 47 to 52. Despite the number of amendments, this is about one very short point: that in Part 2 of the Bill, which at long last we are getting to, Clause 10 is headed,

"Family mediation information and assessment meetings".

These meetings are required before a relevant family application is made to the court.

I say at once that I am entirely supportive of the Government's approach in trying to get parents to agree on their children and to get those who have had failed relationships to agree on how to dispose of any cases they may wish to bring. The problem is the word "mediation". I have heard from various sources, particularly from lawyers, and one has to bear in mind that there is no longer legal aid in private law cases. Therefore, both parties will be litigants in person and one quite simply has to recognise that we are talking about people who have parted, some of them in extreme acrimony, and all with the real trauma of a failed relationship. They would not be in the family court if there were no failed relationship.

Many of them, I think the majority, are very sensible about making the arrangements that have to be made after their relationship is over, but there are some who need some help and they will not get it from lawyers any more. There is also a small minority, perhaps no more than 5%, who absolutely cannot agree on anything and take their failed relationship, covered in acrimony and hate for each other, into the arena of the family dispute in the family court. They fight over the house, they fight particularly over the children and they use the arena of the children to fight through their failed relationship. Sitting as a judge, as I did in this area for 35 years, I can tell you how many acrimonious failed relationships came through my hands.

For a minority of people who are brought to a meeting, which is a requirement before you go to court, mediation is like a red rag to a bull. They absolutely will not accept it, but they will have to accept an information and assessment meeting, which is thoroughly sensible. The word "mediation" may well mean that a number of people will refuse to go to the meeting. They are not going to meet the other party or agree on anything and, therefore, they will not go.

All that I am asking for in this long list of amendments is to take out the word "mediation". I say to the Minister that of course one expects and hopes that the information and assessment meeting would lead to mediation, probably in the same meeting, if it is possible to achieve, but you will not want to stop the ability to give information and assess what is going on by imposing the stumbling block of the word "mediation". I beg to move.

Baroness Jones of Whitchurch: My Lords, we have Amendments 47, 50 and 52 in this group. I have listened carefully to what the noble and learned Baroness has said in introducing her amendments, and have some sympathy with the points she makes, but we are approaching the issue in a slightly different way.

We accept that mediation is not always appropriate or of sufficient quality but we support the central thesis in Clause 10 that parents should attend mediation before making a court application. We believe that there are clear advantages, particularly to children, in avoiding the adversarial nature of court proceedings wherever possible, but accept that there will be exceptions.

Our first amendment simply adds flexibility to the clause to ensure that where the court considers it unreasonable families are not required to attend mediation, information and assessment meetings. While we believe that mediation, and ADR more generally, can be very useful means of resolving disputes, they are not appropriate in every type of situation—for example, in

[Baroness Jones of Whitchurch]
cases of domestic violence or child abuse. We are therefore proposing amendments for making clearer the process for deciding on exemptions whereby you do not have to be involved in mediation.

This point was picked up in David Norgrove's family justice review. At the time, he said:

"There would also need to be a range of exemptions for those for whom an application to court was urgent, or for whom dispute resolution services were clearly inappropriate at the outset. The regime would allow for emergency applications to court and the exemptions should be as in the current Pre-Application Protocol".

When these issues were debated in the Commons, the Minister stated that the Government had invited the Family Procedure Rule Committee to draw up rules specifying areas where exemptions to the proposed procedure would be appropriate, including domestic violence. The Minister also identified at that time other areas where exemptions might be relevant. These included: a need for urgency; where there is a risk to the life, liberty or physical safety of the applicant or their family; when any delay would cause a risk or significant harm to a child; or where a miscarriage of justice might occur. At the time, we welcomed this commitment. However, we requested that the draft rules be made available to Parliament before scrutiny of the Bill is over. We have now received the letter and its attachments from the noble Lord, Lord McNally, which again states that the Family Procedure Rule Committee will be invited to make rules on these matters. Given that we still have not seen the rules, we ask the Minister again: when will these be made available? How can we be expected to judge whether this provision is sufficient to address our concerns in their absence?

Our second two amendments in this group would insert a definition of an "approved mediator" as someone who satisfies defined training and quality standards assurances and would specify that a mediation, information and assessment meeting would always be held with an approved mediator. These amendments originate from concerns expressed to the Justice Committee in pre-legislative scrutiny that the quality of mediators is often far too low. They tie in with the concerns we have just touched upon: that mediators might have to screen for domestic abuse and safeguarding concerns, which require specialist skills. For example, the Children's Commissioner for England has highlighted research showing that around 50% of all private law cases involve domestic violence or child abuse. For this reason, it is crucial that mediators are trained and skilled in spotting these issues. It is also important that mediators are trained to listen to and draw out the voices of the children and young people involved.

When this was discussed in the Commons, the Minister said that he had asked the president of the Family Division to revise the existing pre-application protocol to make it explicit that family mediators must be approved by the Family Mediation Council. He said that meant that they would also have to adhere to the code of practice of that council. However, we do not believe that the provision in the code of practice is strong enough. We emphasise again that concerns have been raised about the quality of mediators, even working under this code. We would prefer that safeguards be set out in the Bill.

Although we agree with the aim of the clause and welcome the provision as far as it goes, I hope that the Minister will understand our ongoing concerns and agree to give further consideration to incorporating the additional safeguards set out in our amendments.

Lord Wigley: My Lords, I shall speak to Amendments 50 and 52, tabled by the noble Baroness, Lady Hughes of Stretford, which would ensure that any mediator who is to deal with family disputes through a family mediation, information and assessment meeting—known somewhat inelegantly as MIAMs—would have to be approved and would need to have undergone relevant training and quality assurance. I also signal my support for Amendments 46 to 49 and Amendment 51, as tabled by the noble and learned Baroness, Lady Butler-Sloss, which would remove the introduction of compulsory mediation.

Currently, of course, attendance at a MIAM is voluntary. Solicitors make a referral to a mediator, allowing clients to receive legal advice prior to the mediation process. Since April 2011, parties have been required to send an FM1 form to the court alongside court applications to show that they have considered or attempted mediation. I should also point out that there is currently no regulation of mediators and that many have no formal training, although of course many are also qualified solicitors.

Under Clause 10, attendance at MIAMs will be made compulsory. There is great concern that this may be used to further domestic abuse in certain cases. Since MIAMs will be compulsory, mediators will be given the task of screening for domestic abuse and children's safeguarding issues, yet without training there can be no knowing whether the skills these mediators possess will be appropriate or adequate to undertake such work. Legal aid will still be available for mediation but since legal aid has been withdrawn for private family law cases, except those involving recent domestic abuse, parties will be entering into the mediation without having received prior legal advice. That puts children and abused adults in a particularly vulnerable position.

Finally, since the majority of parents settle contact arrangements between themselves, the cases which go through to the courts process are by necessity the most complex and the most likely to involve abuse. Forcing parties through mediation in these circumstances would be highly damaging and potentially dangerous. At the very least, accreditation of mediators should be made compulsory. I urge the Minister to accept these amendments.

6 pm

Baroness Howarth of Breckland: My Lords, my name is attached to a number of these amendments. I would like to raise some issues that I came across in eight years' involvement in CAFCASS and many years before that as a social worker. I hope that the Government will look at these issues between now and Report. I would like mediation to be replaced by meetings where information is given. At these meetings, people can find out what they should be doing next; they are

often highly successful in helping the parties talk to each other in a different way. If you use mediation, it has a special nature.

Mediators often say that they will not intervene to give direct information and advice, certainly not as regards helping parties to think directly about the implications of their behaviour. Mediation is often about sitting back and thinking things through. When you are using the court arena simply to fight your battles, as the noble and learned Baroness, Lady Butler-Sloss, so eloquently described, that type of mediation is totally unhelpful. I have been allowed to sit in and watch CAFCASS officers intervene on parties in an extremely direct way. That has had much more impact than the kind of therapeutic situation which is often delivered through the mediation association—I chaired a government working party on this many years ago—in which people, particularly those in conflict, find it very difficult to sit and reflect on their behaviour.

It is certainly important that we have recognised mediators but I hope that mediation will be looked at in a much broader sense than simply reflective mediation. That was one of the issues which came forward in the pre-legislative scrutiny to the 2006 Act. I think it was that Act although it could have been another—I have been here too long. A number of people from mediation groups came to talk about how they could not direct, or be directed themselves, in their work with families. These families often need a much more behavioural approach, rather than a reflective one. We need to think through some of these issues before we come to a conclusion. However, I stand by my name being attached to those amendments which seek to leave out "mediation".

Lord McColl of Dulwich: My Lords, I support this amendment. We need to take notice of what the noble and learned Baroness, Lady Butler-Sloss, has said, given her enormous experience. Let us leave out "mediation".

The Minister of State, Ministry of Justice (Lord McNally) (LD): My Lords, when Rupert Murdoch appeared before a committee down the corridor, he said it was the humblest day of his life. It is not for quite the same reasons but I approach this Bill with more than a certain humility, given the expertise in this Committee. I have listened to a goodly part of the debates. It is common cause that we are trying to get this important Bill right in terms of what is in it. That is the value of this Committee in this Room. It is less frantic than in the other place, less susceptible to the passing trade and more for those with genuine expertise. I approach Part 2, which is the section I shall be dealing with, with a desire to listen and to try to explain how and why the Government have come to the position they have reached thus far in the process of the Bill.

The *Family Justice Review* recommended that parents who need additional support to resolve a dispute should first attend a mediation, information and assessment meeting—a MIAM—to receive information about mediation and be assessed for suitability to mediate. It is very important that there should be an early assessment for mediation. That was the intention behind the existing pre-application protocol introduced in April 2011, which we intend to strengthen under this clause.

With reference to the amendments tabled by the noble and learned Baroness, Lady Butler-Sloss, and my noble friend Lord McColl, we feel that the name of the meeting should convey to those who will attend it something about its purpose. An "assessment and information meeting" would not meet that objective in our view. Indeed, prospective applicants and respondents might be reluctant to attend such a meeting without knowing what they will be assessed for. The Family Mediation Council has published requirements for the conduct of MIAMs which describe clearly the elements to be addressed by the mediator. hey include providing,

"information about all appropriate methods of family dispute resolution, including but not limited to mediation … collaborative law, solicitor-led negotiation and litigation".

We intend to invite the Family Procedure Rule Committee to make rules that include reference to those requirements.

Turning to the amendments tabled by the noble Baronesses, Lady Hughes and Lady Jones, I recognise the concerns about safeguarding access to the courts. The Government do not intend that vulnerable parties should be put at risk or be prevented accessing the court. However, involving the court in every case at the stage before proceedings have started to determine whether it is reasonable for an applicant to attend a MIAM would be unworkable. It would impact on the courts and cause delay, particularly in public law care and supervision cases, and would undermine our efforts to ensure that court involvement is avoided wherever appropriate and safe in private family disputes. We agree that the requirement to attend a MIAM should not apply in circumstances where it is appropriate or necessary for a court to make decisions. That includes where there is evidence of domestic violence, child protection concerns or other reasonable grounds for exemption such as urgency or the significant risk of a miscarriage of justice.

The pre-application protocol in operation since April 2011 already places an expectation on a prospective applicant in relevant family proceedings first to attend a MIAM, but allows for exemptions in the circumstances I just mentioned. A family mediator may also determine, on the basis of their professional judgment, that the nature of the case makes it unsuitable for a MIAM. A mediator might make such a determination on the basis of a telephone discussion with the prospective parties. The current exemptions already reflect our position that adequate safeguards should be in place, and we intend to invite the rule committee broadly to replicate these in making rules under this clause.

A number of noble Lords, including the noble Lord, Lord Wigley, raised the question of the quality and training of mediators. The Government understand the concerns about the need for appropriate training and quality standards for mediators who conduct a MIAM. Family mediators who conduct MIAMs are already required by the Family Mediation Council, or FMC, to meet minimum standards and other detailed requirements, and only certified mediators can conduct

[LORD MCNALLY]
a MIAM. Time does not permit me to list these requirements but I am happy to place a copy of them in the House Library and send them to noble Lords.

The existing pre-application protocol specifies that "family mediator" means a family mediator who is subject to the FMC's code of practice and who is authorised to undertake MIAMs in accordance with the requirements set by the FMC. We propose to invite the Family Procedure Rule Committee to make rules of court under subsection (2)(b), which makes specific reference to those requirements. The rule committee is mandated by statute to make rules about practice and procedure in family proceedings, and we believe it is appropriate that the committee makes these rules about statutory MIAMs.

Clause 10 is intended to strengthen the existing protocol. We are building on a system that has now been in operation for two and a half years. The rule committee has a statutory duty to consider consultation on draft rules, including those to be made under this clause. The detail is, I recognise, important. I am happy to say that the rule committee has decided to consult on the draft rules so that there can be wider scrutiny of them, and it plans to consult shortly. My officials will ensure that the views and concerns expressed by noble Lords are conveyed to the rule committee as part of that consultation process. If any noble Lord would like to receive and consider the draft rules, my officials can ask the rule committee to arrange that.

While checking whether I have covered the other points that were raised, I should just say that we are standing by the point that the MIAM should have mediation in it. It is not helpful for it to be absent. I understand the point that the noble and learned Baroness, Lady Butler-Sloss, made. Even from my limited knowledge, I know of the confusion that there is between mediation and marriage guidance counselling. People who have long decided to get out of a marriage do not want to be guided; they want to be helped through what is a traumatic period. However, I hope that we have this right. The accreditation of mediators is safeguarded. We do not believe that the Government are best placed to undertake a regulatory role in this area, but the guidance is there.

It is interesting that the MoJ has commissioned some independent qualitative research to look at barriers to accessing MIAMs and mediation. This will include looking at the experience of clients who did not attend a MIAM and the reasons for that. We expect to receive a number of emerging findings from that research in early November, and I will certainly make the research available to the House as the Bill progresses.

The rule committee is meeting on 4 November and will seek views in particular from family practitioners who work every day with users of the family justice system. The rule committee itself also has considerable expertise and we believe it is the appropriate body to do this work. My officials will ensure that the views and concerns expressed by noble Lords are conveyed to the committee, and we will make sure that its work is made available to those interested. I hope that with those explanations and rationalisation of our position, the noble Baroness will feel able to withdraw her amendment.

6.15 pm

Baroness Hamwee: My Lords, before the noble and learned Baroness responds, as I understand it her amendments are not seeking to change the content of such a meeting and in particular did not seek to take out the term "mediation" at line 41 on page 9 in the list of what information is to be provided. I understand what she says about not deterring people simply because of a title. Is it necessary to call these meetings anything other than family meetings, just for the purpose of getting people there to deal with the issues as they arise? It seems an unnecessary obstacle.

Lord McNally: That is the very interesting nature of this debate—whether removing the term will mean that it is not on the tin, so people will not be sure what they are letting themselves in for, or whether, as the noble and learned Baroness, Lady Butler-Sloss, is suggesting, it being on the tin will deter people from opening the tin. As I said, we have commissioned research on this. We are only at Committee stage. I will make the outcome of that research available. There is no absolute certainty at this stage as to which of us is right about this.

The Deputy Chairman of Committees: My Lords, with great respect to the noble Lord, a Division has been called in the Chamber. The Grand Committee stands adjourned until 6.27 pm.

6.17 pm

Sitting suspended for a Division in the House.

6.27 pm

Lord McNally: My Lords, before I was so rudely interrupted, I was about to prompt withdrawal of the amendment by the noble and learned Baroness, Lady Butler-Sloss, who I hoped would be convinced by my eloquence. What I was saying when the bell went is that the term "mediation" in the title helps people to know what the purpose is and encourages them to be brought into it. The debate has been interesting. There are those who are arguing that it will frighten people away. We have commissioned some research and perhaps we should await that research and then return to this debate. When the noble and learned Baroness, Lady Butler-Sloss, has seen the research she will say, "Oh, my goodness, I was wrong. The noble Lord, Lord McNally, was right all along". Mind you, we are paying for the research. On that basis, I hope that she will agree to withdraw the amendment.

Baroness Howarth of Breckland: I apologise but just before the Division Bell rang the Minister talked about knowing what was on the tin. The problem with the word "mediation" is that it conveys a range of different concepts, even within the professional world, and certainly if you are a warring parent. I am not saying that we should not indicate what is going to happen in the

meeting and that people may be asked to look at how they can approach their relationships, if not mend them, but "mediation" is a difficult word for everybody, inside and outside the profession, and I think that we should look for another one.

6.30 pm

Lord McNally: My approach to this Committee is that I genuinely do listen and take back its findings not only to my expert advisers but to other experts in this field who are not members of this Committee but will read its proceedings. If people on either side of the argument want to write to me and relate their experiences, we may be able to make a definitive decision on this issue at a later stage. I will certainly not go to the wall over the name that is used; I want an effective process.

Baroness Butler-Sloss: My Lords, I say to the Minister that I am perfectly prepared to be wrong; I often am. However, I think that on this occasion I am probably right and I shall be very interested to see the research. I would very much like a copy of the draft rules. I used to be the chairman of the Family Procedure Rule Committee. I have to confess that I tried not to attend that committee if I could avoid it as it is quite the most boring committee I have ever sat on. However, I should like to see the draft rules and would be most grateful if they could be provided.

The noble Lord knows that it is the practice in the Moses Room to withdraw the amendment and I will, of course, do so, but before I do so I should like to make one or two points. I am extremely indebted to the noble Viscount, Lord Eccles, for making the point that the title should be neutral. That was what I was searching for, although I did not use that word. The neutral title could be "family information meetings" or, as has been sensibly suggested by the noble Baroness, Lady Hamwee, "family meetings". Family information meetings might be slightly better as people would know that that was what they were going to get.

I am entirely supportive of mediation in the right cases, and in all but 5% of cases it will be right, if they ever go to court at all, which most of them do not. Where neither party is legally aided, they will both battle through the real difficulties of making their applications and so on in the county court or magistrates' court and try to cope with something which is completely unfamiliar to them. Therefore, the information meeting, and a requirement to have one, seem to me entirely admirable.

The only problem is that there are in a sense two stages to this because mediation is different from information and assessment. It imposes upon people a requirement to try to settle. You cannot have compulsory mediation. You can have compulsory information and assessment, but you cannot require people to settle. That is something I was taught as a young barrister and I have learnt all the way through my legal and judicial career that people cannot be made to settle. The purpose of mediation is to get them to settle or to try to tackle the issue in a better way, but that could be achieved through the provision of information and an assessment. One has to understand that mediation is in a different class from information and assessment.

I throw out my next point as a possibility for the Family Procedure Rule Committee and the Minister's experts to look at. I am not suggesting that this is necessarily a good idea but I throw it out for consideration. I would be content if the forms that the parties receive put the words "information", "assessment" and "mediation" in brackets. Parties could cross out the word "mediation" to show that they are prepared to opt for information and assessment but are not prepared to go through a process of trying to make them settle. That might just do the trick if you want to keep the word "mediation".

However, I am very concerned about the small number of people who are most likely to go to court. You do not go to court if you can reach agreement. Some 90% do not go to court or go to court only to obtain an agreed order, 5% can be persuaded to go through mediation, and probably mediation is just what they need, but 5% cannot. What could happen if there is a requirement for mediation is that particularly the man, although sometimes the woman, will get to the meeting with the trained mediator and the minute the mediator starts to say, "Well, could you not agree to this?", he will storm out and not listen to what he needs to understand as to how the court proceedings will go. That is my real worry. However, for the moment, I beg leave to withdraw the amendment.

Amendment 46 withdrawn.

Amendments 47 to 52 not moved.

Clause 10 agreed.

Clause 11: Welfare of the child: parental involvement

Amendment 53

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

53: Clause 11, page 10, line 15, leave out subsections (2) and (3) and insert—

"(2) After subsection (3)(g) insert—

"(h) the quality of the relationship that the child has with each of his parents, both currently and in the foreseeable future.""

Baroness Hughes of Stretford (Lab): My Lords, Clause 11 would require a court, in considering arrangements to promote a child's future, to presume, unless there are reasons to the contrary, that continued involvement of each parent would be conducive to the child's welfare. I move Amendments 53 and 55 as much to probe the complex issues inherent in this matter as to propose a definitive solution. Indeed, it is not clear yet whether the Government's proposal or any of the amendments before us today are the best route to achieving the policy objective of meaningful, continuing contact between children and both parents when the parents break up. I hope that this debate will clarify those issues so we can move to a sensible position that maximises the chances of achieving that policy objective, with which I wholly concur, while minimising the possibility of unintended, negative consequences for the children. Much of the debate

[Baroness Hughes of Stretford]
outside this place has turned on the nuances of different legal interpretations of the impact of Clause 11 on the current overriding requirement in Section 1 of the Children Act that the,

"child's welfare shall be the court's paramount consideration".

I will come to that point in a minute but I want to say at the outset that I believe there is a problem to be addressed here, and that the Government are right to try to do so.

We do not yet have a society in which mothers and fathers are accorded equal status as parents. Certainly by much of our public policy, public services and professional practice, whether health, education, social care, policing or the family courts, the default position is very often that parent equals mother. Often this disadvantages mothers because they are held more to account for children's well-being. They are blamed more when things go wrong and the kids go off the rails and fathers are often let off the hook by professionals and organisations. In other instances, however, this default position can work against fathers who can struggle to get recognition from professionals. When parents separate, if the father becomes the non-resident parent, as is often the case, they are often not supported adequately by the courts or professionals to maintain contact with their children. So I start from the position of sharing the Government's desire to put in public policy the principle of shared parental responsibility and involvement in a child's life. Indeed, I would argue—I am sure all of us would argue—that for most children the paramount principle of the child's welfare enshrined in the Children Act cannot be fully met unless both parents are fully involved in a child's life and have a continuing relationship with the child, so it may be that there is a need to strengthen the principle of parental involvement.

I was a Member of Parliament for 13 years and during that time I had many cases in which fathers—and they were all fathers—had become excluded from their children's lives, either because of the minimal contact arrangements decreed by the court in the first place or by the failure of the court to enforce the contact arrangements that had originally been made. Noble Lords may be aware of the recent decision in June this year by the Court of Appeal. Their exceptional but very welcome decision to publish their judgment and findings on one such case—Re A—has revealed the extent to which the system is sometimes failing to enable children to maintain relationships with non-resident parents, usually, but not always, the father. In this case, the father fought for more than 10 years, the family courts made 82 orders, but in the end a senior family court judge decided the impasse should be resolved by banning the father from further attempts to see his child. The Court of Appeal ruled that collectively over time, the failure of the courts amounted to,

"an unjustified violation of M's and the father's rights to respect for family life under ECHR".

It would be a mistake to regard this case as wholly exceptional. It is exceptional only in that it is now in the public domain.

It may reflect in parts, but not all, of the system a culture that does not always regard the non-resident parent as equally important either in initial decisions or in enforcement. When that happens, as the cases I had as an MP showed, it often means that children lose contact not only with their fathers but with their paternal grandparents and their entire paternal family.

However, there is a view that the change in the law proposed by Clause 11, which introduces a presumption of parental involvement, would dilute the paramountcy principle of the welfare of the child in Section 1 of the Children Act. I have seen the Minister's note which contends that the paramountcy principle is not a rebuttable presumption and therefore cannot be in conflict with the presumption in Clause 11 which is rebuttable if it needs to be on the grounds of the child's welfare. The Minister's view is that there is no potential conflict for the courts in juxtaposing the paramountcy principle, which is the overriding one, and the presumption in Clause 11. I am sure we will hear many views on that during the course of this debate, and I look forward to hearing them because this is a complex issue and we need to think about it very carefully.

Another argument raised against Clause 11 is that it is unnecessary, as only around 10% of cases are currently decided in courts and in 2010, for example, only 0.3% of the large number of applications for contact was refused. However, that is to assume that in all other cases contact arrangements are satisfactory, whereas many non-resident parents feel that they are forced—advised, in fact—to accept arrangements for quite low levels of contact between them and their children because that is the cultural norm set by the courts in these contested cases.

We agree that the paramount consideration is the welfare of the child and that this principle should not be jeopardised or diluted. However, we argue that the welfare of most children depends on substantial contact with both parents and the shared involvement of each parent, resident and non-resident, in the child's life, unless there are reasons to the contrary and subject to the detail of arrangements which give the child as stable and enriched an experience as possible. With the focus on the child, any arbitrary splitting of the child's time on a 50/50 or other basis would not be acceptable because this is about the child's rights, not the parents' rights. Equally, it is not acceptable for a parent to use the child to score points or vent frustration with an ex-partner by opposing or frustrating contact and involvement. Amendment 55 therefore clarifies that parental involvement does not and should not equate to shared parenting or shared time and that the involvement must promote the welfare of the child.

Amendment 53 would not include parental involvement as a legal presumption in Section 1 of the Children Act but instead inserts into the welfare checklist in Section 1(3) an additional criterion, namely,

"the quality of the relationship that the child has with each of his parents, both currently and in the foreseeable future".

This would require the courts to focus on the current and future involvement of both parents without making it a legal presumption and therefore subject to the debate

we are having today. It may avoid the doubt that has been expressed about whether the Government's preferred formulation in Clause 11 dilutes the paramountcy principle. That is the core issue that we need to clarify this afternoon. I beg to move.

6.45 pm

The Deputy Chairman of Committees (Lord Haskel) (Lab): If Amendment 53 is agreed, I cannot call Amendments 54 and 55 because of pre-emption.

Baroness Butler-Sloss: I assume that I am allowed to speak to Amendment 54. I agree with, particularly, Amendment 55. It is extremely sensible because it cuts out the division of a child's time, which all too many lay people see as "shared parenting". Thank goodness the Government have taken those two words out of the draft Bill.

Clause 11 raises a technical legal point of considerable importance. It will affect the way in which all family judges and family magistrates try private law cases where the arrangements in relation to children have to be decided by the court. The noble Lord, Lord Ponsonby, would be affected by it sitting in the family proceedings court. I have discussed this clause with some members of the judiciary, who view it with some concern.

I start with a problem. If the clause becomes law, it will raise two potentially conflicting presumptions for the court to tackle. I regret to say, with the greatest respect, that the Minister will be wrong if he says what the noble Baroness said was in his brief. Under Clause 11 the court, in the various circumstances, is to presume, unless the contrary is shown, that the involvement of each parent in the life of the child concerned will further the child's welfare. That is a presumption. However, the whole basis of family child law is the presumption of the paramountcy of the welfare of the child, which is in Section 1(1) of the Children Act 1989.

> "Where a court determines any question with respect to … of the upbringing of a child … the child's welfare shall be the court's paramount consideration".

That is engraved on the hearts of all family judges and magistrates. In order not to be appealed, they always put it at the beginning of all their judgments. It is extremely important.

The effect of Clause 11 is to bring in a second presumption. You cannot help it because you are presuming in Clause 11 and you are presuming in Section 1 of the Children Act. Those two presumptions potentially clash. Quite simply, a court can have only one presumption at a time.

This is not just me making a legalistic technical point. People might be forgiven for thinking that I am going back to my judicial days, but I promise that this is far broader than a legalistic point. The NSPCC and Coram are very concerned, and I am happy to adopt the points that they make. They make three very important points: this clause could lead to a shift in emphasis away from what is best for the child towards the feelings and desires of parents; it could inadvertently increase risk to children by putting pressure on parents to agree to contact arrangements that are unsuitable or dangerous in the erroneous belief that a court would order that kind of contact; and the proposed change is unnecessary because no evidence of a bias in the court system has been found.

It is not good enough to have two presumptions that the judge has to juggle which could clash. It is particularly difficult for family magistrates who are not lawyers. It is also important to bear in mind that the litigants in the cases to which this clause applies will be unrepresented in the absence of legal aid. As to the increased risk of harm to which the NSPCC and Coram refer, these unrepresented litigants have gone through the traumatic experience of a failed relationship. As I said earlier, 90% will not go to court, or only for an agreed order, 5% can be persuaded by the family information and assessment meeting and the remaining hardcore 5% will be extremely antagonistic towards each other. Some of them actually hate each other. They can hardly bear to be in the same room and the failed relationship has become corrosive. That is not a happy situation in which to make arrangements for their children. I regret to say that I have said from time to time that when parents are in dispute about their children, they are the last people who should ever make arrangements for their future. They are simply unsuitable.

However, one parent or the other may give way and agree to unsuitable access/contact—two failed words—because of the way in which this clause is framed and in the mistaken belief that that is what a court would order. Although the phrase "shared parenting" has been deleted, the public perception is that they will get 50% of the time. When they are not necessarily going to court, that is what one parent will try to impose on the other. Those who cannot agree are likely to hold out for more contact, and this will lead to increased litigation before the courts. The courts are already beginning to be clogged up as a result of the absence of legal aid in private family law cases, particularly at district judge level, where, I am told, district judge first appointments, which used to last half an hour, now go on for at least 45 minutes. The backlog of cases is bound to grow. Of course, the children will suffer while the parents go on fighting and carrying on their dispute about child arrangements because it will take longer for these cases to be heard.

My experience as a family judge and then as head of the family court is that judges look to parents rather than impose gender discrimination in favour of mothers. I made a very large number of decisions in favour of fathers, although Fathers 4 Justice did not believe me. If it had looked at my track record, it might have seen that that was the case. I cannot tell the Committee what Fathers 4 Justice did for me, but its members did lock the gate on one occasion so that I could not get out and I had to get my husband to get the bolt cutters to open it. They also had Batman and Robin on the roof of the law courts. Noble Lords may remember that they stopped Tower Bridge functioning for a week by climbing up to the top, and they also climbed up on to Buckingham Palace.

I know that fathers do not accept that there is no gender discrimination against them and in favour of mothers. However, as the NSPCC said, there is no

[Baroness Butler-Sloss]
independent evidence of a bias. The Justice Select Committee accepted that there was no such evidence, as did, I understand, the Children's Minister in the other place. There is no evidence of bias in the courts in favour of one parent. Therefore, the changes appear to be based on perceived rather than actual bias. I hope that the Minister and those behind him will look at the experience in Australia. At this stage of the evening, I shall not go into that, but it has been unhappy, and it has used similar phraseology. Much of this otherwise admirable Bill is very much based on the Norgrove report, which interestingly does not support a change to the Children Act.

Having said all that, I recognise and support the intention behind the clause that the importance of both parents should be at the forefront of the court's mind. It is very sad that countless children are losing one parent, generally the father, who leaves home and there is no further relationship between him and his children. That is a very sad situation. Of course, we must encourage the continuing involvement of both parents so that after they separate, both are encouraged to stay in touch. However, to make it a presumption is a step too far, and that is why I have not sought to delete this clause. I have sought to amend it to highlight the importance of both parents, but not to create a second presumption. My amendment leaves out the word "presume" and inserts "pay particular regard" to highlight to the judge that he or she must,

"pay particular regard, unless the contrary is shown, to the importance of the"—

and then the wording of the clause is followed.

This is an important matter that cannot be brushed aside. I am speaking because of the issue of presumption and the effect that it will have on the public who come to court. From my practical experience, I am extremely concerned about the impact on the overriding presumption of welfare not just in the courts—where I think most judges could cope with the provision, although they do not like to have two clashing presumptions—but in the minds of the public who are trying to come to some sort of settlement. That is worrying, and I ask the Government to look at this issue carefully. My amendment would meet the need to emphasise the importance of the relationship between the child and both parents and the continuing involvement of both parents, but would not create the real problem of competing presumptions.

Baroness Tyler of Enfield (LD): My Lords, I rise briefly to speak to Amendments 54 and 55. I have a lot of sympathy with both of them. I should declare an interest as chair of CAFCASS. I, too, fully recognise and support the intention of Clause 11. In the vast majority of cases it is always desirable that both parents continue to be involved in the bringing up of their children after separation, but we all know that there are some cases where that is simply not possible, and that is what this clause is all about.

I thank the Minister for his helpful letter setting out how Clause 11 might be put into operation. I will leave it to those far more learned than I am in legal technicalities to consider whether this creates two competing presumptions or whether one presumption is rebuttable and the other is not. Others will be able to set that out very clearly.

My focus is on the practicalities and how this will impact on a child-centred approach. Our experience at CAFCASS is that sometimes these distinctions, these legal technicalities, are harder in practice to observe in the often very feverish atmosphere of a family court case, something that the noble and learned Baroness, Lady Butler-Sloss, set out clearly for us. Our work at CAFCASS shows how hard it can be to help parents in cases in which there are high degrees of hostility and acrimony to focus on the needs of their children rather than on themselves. Anything that distracts from the focus on the child can sometimes be of questionable value.

Of course, our task at CAFCASS, as ever, will be to promote as full an involvement of both parents as possible to reduce the number of caring mothers and fathers who lose contact with their children after separation in a way that does not make things worse for children. The difficulty that we are discussing can be very much compounded by the invisible nature of the emotional harm that many children experience through no fault of their own when parents separate or divorce. A no-fault approach to separation—it was accepted in divorce cases some time ago—needs to be carried through. Courts can help children who often feel that they are at fault and to blame in some way for their parents' separation. This emotional harm, unless acknowledged and dealt with properly with all necessary support, can cause a concealed social problem and have long-term costs attached to it.

My key concern about the clause is that parental involvement—I very much support the principle of joint involvement—is seen through a child's eyes. The situation in which a child finds themselves in after separation or divorce can be difficult, affects schooling and friendships and often undermines a child's healthy development. Decisions about parental involvement need to support a child's healthy development, schooling and adaptation to the new situation in which they find themselves.

Finally, each child is unique and a formula of any kind about parental involvement has to be subject to the test of relevance to an individual child, and when courts or CAFCASS are asked to intervene, this is the assessment that they have to make. A statement about the importance of parental involvement is absolutely right in general terms but if in practical terms it is to have real meaning and value for the individual child, that child must also receive the support that they need in the very complex adaptation that they are making.

Certainly, recent research has shown us that children want and need different levels of contact with parents and relatives, and particularly with siblings and friends. It is not just about the parents. We need to ensure that we avoid—and I am sure that we will avoid it—this legislation polarising the contact in any way, in terms of one or both parents agreeing on an enforced basis. Children need a range of contacts with siblings and other relatives to be maintained after separation. I think we all recognise that the law can be a fairly blunt tool, both in its current and proposed forms, to deal

with a child's bespoke and individual contact needs. My plea this afternoon is that this should very much be seen in a child-centred way.

7 pm

The Earl of Listowel: I support my noble and learned friend's amendment and that of the noble Baroness, Lady Hughes. Listening to the noble Baroness, I remember hearing recently a male acquaintance speaking passionately about his despair at not having access to his child. It seemed that his wife, a wealthy woman, had really done him down. He is poor and does not have the access to legal help that she has. Listening to men talk about this so often is very sad.

I will speak during the debate on the amendment of my noble friend Lord Northbourne about the issue of children having access to their fathers, which is desperately important. It is also important to remember that the evidence seemed very clear that while there is a perception that courts are finding favour more with women and that women are too effective at frustrating what the courts want, in practice this is not happening. I heard a presentation of the evidence a few months back but am ashamed to say that I cannot remember the presenter of the details. As my noble and learned friend has just said, the Justice Committee agrees with that. It seems that the Minister agrees too, so I would be grateful if he could help me by providing the information. I think this was a careful and thorough look at cases by an academic to check the perception that there was a bias towards women. In fact, the research showed, quite conclusively and clearly, that this was not the case. I would be grateful if the Minister's expert advisors might help with that information. He can write to me with it. It is a perceived problem but it is not a real problem. What is true, however, is how tragic and difficult these issues so often are.

I very much regret that I cannot support the Government on this occasion. I examined a similar proposal to that in the Bill in great detail on a previous occasion. In doing so, I visited two contact centres and spoke to staff and parents there. I also spoke with professionals from the Anna Freud Centre who supported such families. My concern is that, at best, the Government may be raising expectations in parents which will only add to litigation and harm children as the conflict between their parents is prolonged. This is the point that my noble and learned friend made and it was also a concern that Norgrove had. In Norgrove's family review, at first he was favourable to the idea of having some stipulation in the law that this should happen. Then he looked at what happened in Australia and became determinedly against going forward in this way. At worst, my fear is that the Government may be putting children more obviously at risk as courts are pressured to grant more contact to both parents.

By the time these cases come to court, there are often mental health or substance misuse issues within the family. What I heard from the contact centres and the professionals last time around was that, too often, a parent—and often this would be the father—was granted access to his child before he had addressed his alcohol misuse issues, for instance. Quite often the agreement would be that the father would have supervised access on two or three occasions, but that would be gone through in a quite perfunctory way and the father would have access. I should perhaps not name a gender here; the parent could be male or female.

Following this and before we legislated in this area—it was very helpful at the time—the courts inspectorate produced a damning report on child safeguarding in the private family courts, finding that court reporting officers were not communicating child protection concerns to the relevant authorities. If anything, back then the bias seemed to be too much in the other direction: courts were not taking enough care about granting contact between children and their parents.

Family courts are under great pressure financially. A large increase in litigants in person adds a further burden. It would be wisest to allow judges to make decisions about what they consider to be in the best interests of the child without the distraction that the Government's proposal offers. I am strongly of the view taken by the National Society for the Prevention of Cruelty to Children, Coram—a wonderful institution which produced the model for the children's centres that have proved so successful—and my noble and learned friends that the Government should think again about this. I look forward to the Minister's response.

Baroness Howarth of Breckland: My Lords, I want to intervene briefly to say two things. All this is about perception as against fact and we have to ask ourselves why we are dealing with this clause at all. The noble Baroness, Lady Tyler, will know very well that CAFCASS, when being pressed by fathers who were saying that the presumption was against them, carried out research which showed that there was no presumption either way.

Of course there are miscarriages of justice. We cannot deny that from time to time in all areas of the law there will be miscarriages of justice, for both women and men, but that is not to deny the overriding information and the principle. I am very concerned that if we lose the paramountcy of the welfare of the child, the confusion that will follow will lead to other perception issues.

The other perception issue is very clearly, as one or two noble Lords have intimated, what is in the press—and that is that the father, it is usually the father, will be able to gain shared parenting. What they mean by shared parenting is half and half. We know how damaging that would be to a child, as the noble Baroness, Lady Tyler, said, when seen through the child's eyes. If you talk to children and young people who are before the court, they want their parents to stay together—you have to work through all that—and then they want their lives disrupted as little as possible. They want to remain in the same school; they want to be able to see their friends at the weekend; they do not want to take a suitcase somewhere else every two weeks—although, I have to say, some children quite enjoy it. I have talked to kids who really enjoy having two places and adjust to it. However, many do not, and therefore it is important that the child's wishes and feelings are taken firmly into consideration. I

[Baroness Howarth of Breckland]
think the perception will be that fathers, in particular, can get a different agreement from the court, rather than the paramountcy of the welfare of the child being the main issue.

Several noble Lords have alluded to the Australian experience but we should take it extremely seriously. If this has been tried elsewhere and has gone seriously wrong, why should we do it here and create the same situation? We should remind ourselves that they had this legislation and that the research evidence showed that the number of cases where children's time was divided increased substantially. The whole thing became dysfunctional to the point that in 2011 the Australian Government were forced to legislate again to prioritise the safety of children over the wishes of adults. I am quite sure that this Government, particularly the noble Lord, Lord McNally, would not wish to find that we were not prioritising children and had to change the legislation after damage had been done. So let us deal with the perceptions and base our legislation on fact.

Baroness Hamwee: My Lords, the noble and learned Baroness says that the judges would cope with Section 1 of the 1989 Act being amended by this but I do not think we want to wait for a judicial review as to exactly what would be meant if the new words were inserted in Section 1. If they were inserted in the form that we have in Clause 11, we would have Section 1(1) saying that welfare shall be the court's paramount consideration—if that is not a presumption, I am even more concerned about it; then Section 1(2) saying that in dealing with delay the court shall have regard to that general principle; and then proposed new subsection 2A referring to presumption unless the contrary is shown.

I have never practised in this area so maybe it does not matter, but I am very unclear as to how weighty the contrary needs to be. To put it in different terms, are we talking about the contrary shown on a balance of probabilities or beyond reasonable doubt? The noble and learned Baroness has those words in her amendment, to which I and my noble friend Lady Walmsley, who is not in her place, have added our names. I do not think they would have the same difficulty when tied to having particular regard as they would to a presumption. I become more and more confused as to what Clause 11 means by a presumption unless the contrary is shown. A presumption is a presumption.

Baroness Meacher (CB): My Lords, I rise with some trepidation to speak very briefly to Amendments 54 and 55. I welcome the comments of the noble Baroness, Lady Hughes, and the noble Earl, Lord Listowel, who both recognise that there are times when fathers are locked out of contact with their children. I applaud the Government for recognising that the involvement of both parents in a child's life, all things being equal, will further the child's welfare. No one would question that the child's welfare has been and must continue to be of paramount importance. There is no question about that, but there have been times when that has been lost and the feeling has been that as long as a child has a mother, perhaps that is okay. That is my concern. I fully recognise what my noble and learned friend Lady Butler-Sloss said about the research. I am not suggesting here that there have been wholesale miscarriages of justice but every single miscarriage of justice in terms of parenting one's own children is a personal tragedy and we therefore need to take these things extremely seriously.

This is being made worse in the modern world because fathers are often intimately involved in their child's upbringing from birth. In my day it did not happen. Father was a long way away for quite a long time so the big bonding went on with mother, not with father. Often parents are genuinely sharing the parental role. At times a father will be the primary carer—I cannot remember fathers being primary carers in my day—or maybe a better parent than the mother. On occasions a mother may be neglectful, selfish and unloving. They may even emotionally abuse their child. Of course, all these things can apply to fathers, except that fathers, instead of emotionally abusing their child, will tend to hit out. That has been one of the big problems in decision-making on parenting, separation and childcare. As a former social worker, I can say that we found it quite easy to see a bump on someone's head but found it very difficult to identify and to codify emotional abuse of children.

7.15 pm

One of the things I want to put on record is that I agree that it has been a difficult area and will probably continue to be so, but it does not make it any more okay for the father to lose out. I am aware of cases where it has taken inordinate amounts of time for the system to record that it was the mother who was the abusive and disruptive parent. There was an enormous amount of upset and disruption to the children in that long process. In the end they get there—I am sure the research shows that they get there—but I am not sure that the research has looked at the costs of the whole process and at the difficulty for people of getting to grips with emotional abuse and trying to avoid the much simpler assumption that perhaps the child can be with the mother and that will be all right. It is a little worrying.

I humbly suggest that we need a small cultural shift to reflect the revolution, as I see it, that has come about in family dynamics in our country. Fathers in many families are playing a much greater role and bonding with their children at a very early age, which is relatively modern. Having said that, I realise that there are many traditional families and many bad fathers—there is no question about that—and it is incredibly difficult for the people with the exceptionally tough job of deciding what to do in such situations. I do not pretend that this is straightforward.

I want to put on record that I would regret any watering down of Clause 11. However, I would not have the audacity to challenge my noble and learned friend Lady Butler-Sloss, or indeed her eminent co-signatories. I merely urge that the Minister and those who have put their names to Amendment 54 find a way to preserve undiluted the objective of Clause 11 while enabling judges to do their job. Of course, this will need to reinforce the presumption that

the welfare of the child is pre-eminent. I feel that Clause 11 does that, but then again I am a lay person. That is my excuse.

My only concern with Amendment 55 is the reference to indirect involvement. I hope that there is no intention to make it easier to relegate fathers to an indirect role in their children's lives.

Lord Mackay of Clashfern (Con): My Lords, I would like to say a word or two about this problem because I had the responsibility, rather a long time ago now, of formulating the provisions which are here being subject to amendment. The most important principle was then laid down, and acknowledged as being an important principle, that the case has to be decided in the light of the best interests of the particular child in the particular circumstances in which that child finds himself or herself.

It is very difficult to lay down anything that looks like rules about how you decide that because, as has been said already, the variation in family situations across the board is very large indeed. In some cases, it would be quite wrong for the father to have contact with the children for reasons that are sad and serious. On the other hand, there are sometimes occasions when it is thought to oust the father for no good reason at all. That also is serious. However, they are very different situations and anything that impinges on the importance of the paramountcy of the welfare of the individual child has a danger. Amendment 55, which would relegate this consideration to being one of the factors that has to be taken into account, strikes me as a reasonable way of handling the situation. Not many family judges or lay magistrates do not believe in the importance of the relationship between the parents in both cases, if possible.

7.20 pm

Sitting suspended for a Division in the House.

7.30 pm

Lord Mackay of Clashfern: I was simply making the fundamental point that adherence to the paramountcy of the welfare of the child is the principle that should rule in all cases without exception.

I understand the problem to which this clause is directed, and I shall not repeat what has been said about where it came from and so on. There is a possibility that Members of Parliament get a slightly distorted picture of what goes on in the courts, because the people they see at their surgeries are generally not those who have won. People do not normally come along to say how well they have got on. I have never been a Member of Parliament myself, so noble Lords will understand that I am only speculating, but that is a possibility.

I believe that all judges—family judges, magistrates and so on—recognise the importance of trying to preserve the relationship between a child and both parents. I entirely agree that that should be affirmed but what I find very dangerous—and they appear in more than one amendment—are the words "unless the contrary is shown". One can see immediately what might happen. Let us say that the wife decides that she wants to have the child. She concentrates on proving that the father is not fit or that he has done something, unless the contrary is proved. That puts a focus on what are often the most difficult issues.

I suggest that the important factor is the relationship between both parents, as expressed in the clause, and that should be one of the factors that have to be taken into account in considering the welfare of the child. It is obviously important that the relationship with both parents should be preserved if possible. A factor in the checklist that includes that would obviate a great deal of the difficulty that this kind of clause could produce in putting a focus on one party trying to show that the other party is not suitable for some reason or other. It would be much better for the judge or magistrates, in approaching the matter, to take account of the fact that it is very much in the interests of the child and of the paramountcy of the child's welfare that both parents take an interest and be involved. Precisely how that is done can be looked at as part of the general picture, but it strikes me that focusing on this as a separate matter is very likely to make matters worse rather than better.

It is some time since I had experience of the working of the courts but I used to, and much of what I learnt then remains with me and was part of what I had in mind when the Children Act 1989 was formulated. It is also fair to say that the criteria set out in that Act have proved to be a considerable international instrument in developing justice for children. Therefore, I have a very strong affiliation to what was in that Act and I am not keen to see it much changed. So long as the change is an improvement, I welcome it, but one has to be careful that one does not distort the principle while making improvements.

Baroness Meacher: The noble and learned Lord referred to the clause possibly generating parental attempts to downgrade the other parent. Does he agree that that is absolutely the norm at present? That is what parents do and women are particularly good at it. They really go for the father and try to discredit him. I suggest that we already have that in spades.

Lord Mackay of Clashfern: It is the job of the judge to do his or her best to lower that. As I say, it is some time since I had experience of dealing with this issue but I have had that experience. However, it is counterproductive to do the opposite and to make important, and put up as a presumption which may be rebutted, something which is absolutely at the heart of the difficulty between the parents. As the noble Baroness says, this situation often arises. I feel that a judge would be better able to keep the situation under control if he or she did not have to focus on whether or not the contrary is proved. The judge would just have to take account of the nature of the relationships and make sure that they are properly taken into account when addressing the major question of principle.

Lord Northbourne (CB): I seek guidance on one small issue. It is probably very stupid of me not to know about this but I am sure legal colleagues will be

[LORD NORTHBOURNE]
able to help me. Can the arrangement be changed? For instance, a little boy of two would be better placed with his mother but, by the time he is 12, his father may well become a much more important part of his life.

Lord Mackay of Clashfern: If that is addressed to me, the answer is certainly yes. I have a distinct recollection of a case in which the mother left the family at a very early stage and the father and his mother had to look after the child. After a while, the child's mother decided to come back. She had had a relationship which soured after a year or two and she thought that she would come back. You have to take account of the existing situation and the paramountcy of the welfare of the child, which may alter over time and need to be reviewed from time to time. There is plenty of machinery to do that, although, as my noble and learned friend Lady Butler-Sloss said, one's time may be consumed by other things. However, so long as you can get a review, that can be dealt with.

Lord McNally: My Lords, this has been an extremely important and high-quality debate. I am not a lawyer but I have spent three and a half years at the MoJ. Therefore, when the noble and learned Baroness, Lady Butler-Sloss, said that she had the greatest possible respect for my opinion, I am aware that the term "greatest possible respect" is reserved for the most insulting comment that a lawyer is about to deliver to an opponent.

I was interested in the joust between the noble Baroness, Lady Meacher, and the noble and learned Lord, Lord Mackay. When I was first given this ministerial responsibility, I had speaking engagements in Birmingham and Putney that arose within a few days of each other. I experienced some of the doubts that have been expressed in today's debate about the road we were going down. What interested me was that at both meetings two social workers in the audience said quite unprompted exactly the same thing to me. They said, "Don't underestimate the willingness of women to use their children in these battles". The noble Baroness, Lady Meacher, pointed out that in the 25 years since the original legislation was passed there has been a change in what she described as family dynamics. We are trying to deal with the situation and get the wording right.

Even in this debate there are things that take us down cul-de-sacs. We are not following the Australian model; in fact we have learnt from it. Our proposal does not require the court to balance these two factors—I will come back to this. There is no idea of 50/50 parenting. One of the problems when this was debated down at the other end was that the press coverage was very much in terms of this being a major step change. I welcome the approach of the noble Baroness, Lady Hughes, in her opening remarks. The paramountcy of the welfare of the child is still there in this legislation.

The noble and learned Baroness, Lady Butler-Sloss, from her vast experience, claims that the way it is worded produces a contradiction. Let me try to explain our approach to see whether we can convince her, but I suspect that we will be coming back to this issue on Report. It is not possible for the presumption to clash with the paramountcy principle. The paramountcy principle is not a rebuttable presumption. The child's welfare must be the court's paramount consideration. If the court does not believe that the child's welfare is served by the involvement of a parent, it will not order any such involvement, and the clause does not require it to do so. We are not saying that the court must make an order that involves both parents, nor are we seeking to define the nature of the involvement which the court may order. We are certainly not making any assumption about how the child's time may be divided. That is not what the clause is about.

The Explanatory Notes set out clearly how the clause operates. We have included a process chart as well as an example situation to demonstrate how we would expect the presumption to work in practice. In addition, I have provided further information on the clause, which sets out in detail how the clause will work in practice, and it addresses the concerns that have been raised. We will also ensure that clear and accessible information is available for parents about the range of changes we are making. This will help to address wider concerns about the risk that the clause may be misunderstood. We have deliberately avoided defining the nature of involvement, which the court may order. The presumption stands if any form of involvement can take place without risk of harm to the child and would further the child's welfare. We have used the word "involvement" as the simplest, most neutral approach to express the full spectrum of ways in which a child can have a relationship with a parent. We believe that the introduction of a presumption in legislation is the best and clearest way to ensure that children are able to benefit from the involvement of both parents following family separation.

This clause is part of the consistent messaging that will be conveyed throughout the dispute resolution process about the valuable role that both parents can play in their child's life, whether they are together or apart. The deliberate reference to a presumption sends a strong signal to both parents and others as to how the court makes its decision. It makes clear that it is the norm rather than the exception for both parents to be involved in the child's life. On the points raised, I think that I have already referred to the point made by the noble Baroness, Lady Hughes, about whether it was 50/50. The wording in the clause does not suggest or imply in any way equal or substantial shared time. The Explanatory Notes make it clear that this is not the expectation.

As regards the central argument put by the noble and learned Baroness, Lady Butler-Sloss, which I suspect we will continue to discuss on Report, we believe that there are no conflicting presumptions. The parental involvement presumption will always be rebutted in a situation in which the child's welfare requires it, and the paramountcy principle is not rebuttable.

7.45 pm

A number of other points were made about the fact that so much of this is a minority issue and that most cases are sorted out. Related to the point made by the

noble Baroness, Lady Tyler, the Sorting Out Separation app that DWP has launched will include comprehensive information so that parents understand what this change means, and what it does not mean. We want to work with relevant organisations in the voluntary sector to make sure that we get this right and that parents have the information that they need. I think that that covers it.

On the point that the noble Baroness, Lady Hamwee, made about the standard of proof, for the presumption to be rebutted the court must be satisfied that it is more likely than not that involvement would not further the welfare of the child.

What I want to do at this hour is take this issue away and read *Hansard* carefully and have discussions with colleagues. The difference in the debate at each end of Parliament is strange, however. It is not just that MPs see only the complainers at their surgeries. I wonder whether there is a generational gap here and whether at the other end there is more appreciation of the new dynamics of family that need to be recognised. I realise that in this place I am not trying to convince but trying to listen. We have had a substantial and useful debate, and I hope that in the 90 seconds left before the shutters come down, the noble Baroness, Lady Hughes, will gracefully withdraw her amendment—at least for another day. Again I thank her for her constructive approach.

Baroness Hughes of Stretford: My Lords, whatever I do, I hope that I will do it gracefully. We have had an excellent debate because we knew before we started that there would be a variety of views. It has been a very constructive debate from which a great deal of consensus has emerged and become evident. We are all agreed that the welfare of the child should be paramount and that this principle should not be diluted. We are all agreed that continued involvement of both parents in a child's life is desirable, indeed essential, to the child's welfare, unless there are reasons to the contrary. We are all agreed, or at least will accept, that a change in the law of one kind or another to put greater emphasis on parental involvement would be acceptable; and we are all agreed that parental involvement should be determined from a child-centred point of view—that is, reference to the child's experience and not any particular division of the child's time. I can reassure the noble Baroness, Lady Meacher, that our reference to indirect involvement is not intended to suggest that, say, three letters a year would be all right at all.

Some differences of opinion are evident, particularly around whether the courts and professionals do enough at the moment to promote contact by fathers and whether there is an issue there. I feel that there is an issue there, and not just as a result of cases from when I was an MP. I take the point of the noble and learned Lord, Lord Mackay, about that. None the less, when as a Member of Parliament you get a large number of cases such as that, it behoves you to ask whether things are working properly. That is what you are there for.

I also cited the recent Court of Appeal judgment, which was very strong on the fact that many courts in that case had issued 82 orders and none of them had resulted in the contact that they had sought the father to make. The noble and learned Baroness, Lady Butler-Sloss, said that there is no evidence of bias. Of course, we do not get information from family courts about their individual decisions but there are certainly concerns among fathers themselves. I do not think that many people can top the noble and learned Baroness but in relation to Fathers 4 Justice I think I can, because they actually handcuffed me. However, as your Lordships can see, my wrists are so slender that I was able to slip out of it, much to the man's consternation. However, I talked to some other very reasonable fathers' groups over many years when I was Minister for Children. They testify to having difficulties and we have to take them seriously.

Having said all that, I am not sure whether we are any further forward because it depends on the Minister's contention that the paramountcy principle cannot be overridden by a rebuttal presumption, which is that in Clause 11. So that we do not rehearse these same arguments at Report, I suggest to him with respect that he could arrange some meetings and further briefings so that we could have a discussion in a smaller environment to see whether we can find a way forward before Report. With that, I beg leave to withdraw the amendment.

Amendment 53 withdrawn.

Amendments 54 and 55 not moved.

Clause 11 agreed.

Baroness Northover: My Lords, this may be a convenient moment for the Committee to adjourn.

Committee adjourned at 7.51 pm.

Written Statements

Wednesday 16 October 2013

EU: Foreign Affairs and General Affairs Councils

Statement

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi) (Con): My Honourable Friend the Minister of State for Europe (David Lidington) has made the following Written Ministerial Statement.

My Right Honourable Friend the Secretary of State for Foreign and Commonwealth Affairs will attend the Foreign Affairs Council (FAC) on 21 October, and I will attend the General Affairs Council (GAC) on 22 October. The FAC will be chaired by the High Representative of the European Union for Foreign Affairs and Security Policy, Baroness Ashton of Upholland, and the GAC will be chaired by the Lithuanian Presidency. The meetings will be held in Luxembourg.

Introduction - Middle East Peace Process

Baroness Ashton will outline progress on the Middle East Peace Process, including on the EU settlement guidelines. We do not expect discussion, but if it ensues we will reaffirm our support for the negotiation process, our continued support for the economic track and our position on the EU settlement guidelines, as necessary.

Introduction - Iran

Baroness Ashton is expected to report back to the Foreign Affairs Council on the E3+3 talks with Iran taking place 15-16 October in Geneva. No discussion is expected.

Introduction – Serbia-Kosovo

Baroness Ashton is likely to update Ministers on the EU-facilitated Serbia/Kosovo Dialogue. We welcome Baroness Ashton's leadership on this and welcome the progress made, including on agreements on energy and telecoms. Implementation of Dialogue agreements by both sides needs to continue and there is more to do more on integration of police and justice structures in north Kosovo. The smooth passage of municipal elections in Kosovo in November will be important.

Introduction – Africa

We expect Baroness Ashton to raise Africa during her introductory remarks, focusing on: Kenya, including the recent terrorist attack at the Westgate shopping mall in Nairobi; Somalia, highlighting the importance of maintaining the support to AMISOM in the fight against Al Shabaab; and the Central African Republic where Ministers will agree Council Conclusions that highlight the continuing poor security and humanitarian situation.

Introduction – EU-China summit

Baroness Ashton will provide an update on preparations for upcoming high level meetings, including the EU-China Summit, which is scheduled for 21-22 November. "Green Growth in a Safer World" is the overall headline, with prosperity, security and sustainable development as supporting themes. We do not expect a discussion.

Eastern Partnership

The Eastern Partnership discussion will focus on the preparations for the Vilnius Summit and Ukraine's progress against the December 2012 FAC Conclusions. The UK is a firm supporter of Ukraine's EU aspirations, and has made clear that progress towards a closer relationship with the EU requires Ukraine to demonstrate its commitment to EU principles including the rule of law. Ukraine is an important EU neighbour and a closer relationship between Ukraine and the EU will benefit both parties economically and in terms of European security. Ministers may also discuss how the EU should respond to recent Russian pressure on eastern partners in advance of the Vilnius Summit. The UK is clear that a closer relationship with the EU will bring clear benefits to eastern partners, through improved trade opportunities, business environment, and rule of law, and that this is in Russia's long-term interests as well as the EU's.

Southern Neighbourhood

On Syria, we will continue to encourage convening of the Geneva II talks for a political settlement in Syria by mid-November, including by supporting the moderate opposition. We will encourage the EU to contribute additional funding for humanitarian aid and the mission of the Organisation for the Prohibition of Chemical Weapons to destroy Syria's chemical weapons programme. We will encourage Member States to do all they can to support September's UN Security Council resolution on destroying Syria's chemical weapons programme and Presidential Statement on increased humanitarian access in Syria.

On Egypt, Baroness Ashton will brief Ministers on her visit to Cairo in early October where she met with a wide range of interlocutors. Ministers will also discuss the EU's internal review of assistance to Egypt. The UK remains committed to supporting Egypt in its political transition, and to supporting the strengthening of democratic institutions. There will be Conclusions on Egypt.

Burma

There will be a short discussion of Burma at the FAC, before Foreign Ministers join Aung San Suu Kyi for lunch, who is visiting Luxembourg and the European Parliament in Strasbourg.

The lunch with Aung San Suu Kyi will be an opportunity to hear her views on the reform process in Burma and discuss her priorities as we move closer to national elections in 2015.

General Affairs Council

The 22 October GAC will focus on the preparation for the 24-25 October European Council, the next stage of the European semester, macro-regional strategies and possibly enlargement.

Preparation of the 24-25 October European Council

The GAC will prepare the 24-25 October European Council. This European Council has an extensive agenda covering: the digital economy, innovation and

services; growth, competitiveness and jobs; Economic and Monetary Union; the Eastern Partnership summit; and migration issues, following the tragedy in Lampedusa.

It is very positive that the October European Council has such a strong focus on areas that have the potential to promote growth. We have consistently pressed for action to deliver on many of the areas that will be discussed at this European Council.

I will be arguing for the need for the European Council to prioritise areas where it could go further, such as on the services sector where we would like to see more ambition in the proposals; completing the digital single market by 2015; and continuing the Prime Minister's drive for the EU to reduce burdensome regulation for business. However I will also be arguing the need to get the details right on issues such as telecoms, where there are complex proposals

European Semester

The GAC will also discuss the European Semester, which gives macro-economic and fiscal guidance to Member States, assessing implementation of the Compact for Growth and Jobs agreed by the June 2012 European Council. This particular discussion will focus on the lessons learned in 2013 in preparation for the European Semester in 2014.

Enlargement (Turkey)

Though not yet finally confirmed the GAC may discuss Turkish accession, particularly regarding the formal opening of Chapter 22 (Regional Policy and Coordination of Structural Instruments) at an Inter-Governmental Conference this autumn.

Macro-Regional Strategies

There are two main macro-regional strategies currently in existence, the Baltic Sea Strategy and the Danube Strategy. There are proposals for other strategies including for the Adriatic-Ionian region. These macro-regional strategies are comprehensive frameworks for Member State cooperation that have covered a wide range of policy areas from maritime issues to the cross-border delivery of structural and cohesion funded projects and are generally endorsed by the European Council.

The draft conclusions on macro-regional strategies reiterate that they should require no new money (though structural and cohesion funds already allocated to those regions can be channelled towards projects complementing the macro-regional strategies); no new institutions and no new legislation. The conclusions do not propose establishing any new macro-regional strategies but set out preconditions that would help make such strategies effective.

The discussion at the GAC will look at how the existing macro-regional strategies are adding value and lessons learnt from them and the Alpine Strategy has been added to the agenda as an 'AOB' item.

Housing: Private Rented Sector

Statement

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Stowell of Beeston) (Con): My right hon Friend the Secretary of State for Communities and Local Government (Eric Pickles) has made the following Written Ministerial Statement.

The private rented market is a vital asset to this country. It is an important option for the millions of people who prefer the flexibility that renting offers, or to simply are saving up for a deposit so they can buy a place of their own. The Coalition Government is delivering a series of policies to promote home ownership and affordable housing. But we recognise there is more to do to support a vibrant private rented sector.

I am therefore today announcing a package of further measures to help millions of hard-working tenants get a better deal when they rent a home. These measures will give tenants the know-how to demand longer-term tenancies, stable rents, better quality accommodation, avoid hidden fees when renting a home and demand better standards.

Equally, we recognise the need for proportionate regulation. Excessive red tape – such as compulsory landlord registration fees or rent controls – would reduce investment, restrict choice for tenants and ultimately drive up costs for tenants.

We also recognise the need to support the vast majority of law-abiding, decent landlords in managing their properties and ensure they are protected when tenants intentionally do not pay rent or damage their property. At the same time, action should be taken against the small number of rogue landlords to stop tenants being ripped off when they rent a flat or house and ensure tenants have the confidence to take action without fear of eviction or harassment.

Ensuring high quality accommodation

I have set out today that we will develop a code of practice on the management of property, in the private rented sector. This code of practice will set out what landlords, letting agents and property managers should do when providing tenants with homes to live in. It will make clear that it is their responsibility to maintain the property to an acceptable standard to prevent tenants having to pay for repairs out of their own pockets.

Tenants have a right to live in homes that are safe and well maintained. We will undertake a review into how we can ensure tenants are satisfied that their homes are safe and healthy and what the standards of hygiene and sanitation they can expect and how they will be protected from damp or excess cold. We will consider the scope for requiring landlords to repay rent where a property is found to have serious hazards. This will include considering extending local authorities' ability to recoup housing benefit through rent repayment orders, so that taxpayers money is not used to support landlords who provide sub-standard property.

Protecting tenants from rogue landlords

Tenants must feel able to raise concerns or complaints with their landlords about the homes that they live in, and they must be able to do this without fear of eviction.

We will also work with local councils to share best practice on the prosecution of landlords for housing offences. This will make clear the importance that local authorities demonstrate that such offences have a real impact on the lives of tenants.

Cutting costs for tenants

A Tenants' Charter, published today in draft, which will tell tenants what their rights are, what to expect and what to ask for and what to do if they have any problems. This will explain the flexibility which exists to enable tenants to ask for longer tenancies, promote awareness amongst tenants of what to expect, including on the transparency of lettings agents' fees. Greater transparency will help stop unreasonable practices and unfair charges by letting agents, and would-be tenants will know the full costs before they sign up to any contract.

We will also develop a model tenancy agreement, by early 2014, which will simply and more clearly set out the rights and responsibilities of tenants and landlords alike and help tenants to understand which clauses should be in every agreement, which are optional but standard and which are unique to that property. We have already directly encouraged those bidding in the second round of the Build to Rent fund to support longer-term tenancies.

We will shortly lay before Parliament the secondary legislation setting out the conditions compulsory redress schemes must meet. All letting and management agents will be required to belong to such a scheme. This will ensure that complaints about their service can be investigated by an independent person. A complaint could be made where the agent had not made clear what fees would be charged and, where a complaint was upheld, the redress scheme could require the agent to pay compensation to the tenant.

Supporting good landlords

We know that the majority of landlords in the private rented sector are good landlords who have excellent relationships with their tenants and who maintain their properties. We want to ensure that all tenants have this same level of service and the same standard of property. We also know that there are some bad tenants out there; we will work with landlords to identify any improvements that can be made to the eviction process, so that the law-abiding landlords have confidence that they can get their property back if a tenant stops paying the rent and which will provide them more confidence to offer longer tenancies.

We recognise that many buy-to-let landlords will be prevented from offering longer tenancies because of restrictions in their mortgage. We will be holding a mortgage lenders summit to identify the barriers to lenders agreeing to longer tenancies and consider how lenders can make it easier for landlords to offer longer tenancies that benefit families.

Increasing the supply of rented housing

Increasing the supply of housing will provide more choice for tenants and more competition between landlords, which will in turn deliver longer tenancies, stable rents, more professional landlords and better properties for people to live in.

This is why we have introduced the £1 billion Build to Rent fund, and we are offering up to £10 billion in housing guarantees, to bring more developers into the market, and build homes specifically for private rent. These will be high quality developments that will drive up standards in all areas of the sector. To ensure delivery, quality and affordability, we have appointed a specialist Private Rented Sector taskforce precisely to promote these two schemes to the wider industry. We are also encouraging local authorities to promote purpose built rental schemes on their land holdings and via the planning system.

We are supporting hard-working tenants while ensuring that good landlords are not penalised by the introduction of unnecessary red tape and rooting out the rogue landlords and letting agents that all too often give the sector a bad name.

I would like to thank my Hon Friend the Member for Rossendale and Darwen for his assistance on this policy development in his capacity as a member of the No. 10 Policy Board.

Copies of the associated documents are being placed in the Library. My Department is also publishing today the Government's formal response to the Communities and Local Government Select Committee's report on *The Private Rented Sector.*

Written Answers

Wednesday 16 October 2013

Courts: Community Advice and Support Service

Question

Asked by ***Lord Beecham***

To ask Her Majesty's Government whether they will commission a formal outcome study of the Community Advice and Support Service in the Plymouth, Bodmin and Truro Magistrates' Courts. [HL2262]

The Minister of State, Ministry of Justice (Lord McNally) (LD): HMCTS have no formal 'outcome study' of the Community Advice and Support Service desks (CASS) planned.

Education: Special Educational Needs and Disability

Questions

Asked by ***Lord Touhig***

To ask Her Majesty's Government how many appeals relating to statements of special educational needs were made to the Health, Education and Social Care Chamber of the First-Tier Tribunal in the last (1) 6 months, (2) 12 months, and (3) 2 years; and how many of those were (a) won by parents, (b) won by local authorities, and (c) withdrawn by parents. [HL2270]

To ask Her Majesty's Government whether they have any plans to publish data relating to appeals against statements of special educational needs made to the Health, Education and Social Care Chamber of the First-Tier Tribunal in the next (1) 6 months, (2) 12 months, or (3) 2 years. [HL2271]

The Minister of State, Ministry of Justice (Lord McNally) (LD): The Ministry of Justice publishes data on special educational needs and disability appeals as Official Statistics in Tribunals Statistics Quarterly. The overall number of receipts and disposals are published each quarter. The table below shows Receipts and Disposals in the First-tier Tribunal (Special Educational Needs and Disability), FtT SEND, in the six months, 12 months and 24 months to June 2013.

	6 months to Jun-13	*12 months to Jun-13*	*24 months to Jun-13*
Receipts	1,960	3,592	7,107
Disposals	1,728	3,555	7,213

In addition a more detailed breakdown of statistics specific to FtT SEND is published with quarter two statistics each year. These include data on the outcomes of appeals for the year from September to August to equate as closely as possible with the academic year. The table below shows the total number of appeals registered by the FtT SEND and the outcomes of the appeals for the periods September 2010 - August 2011 and September 2011- August 2012.

Year	*2010-11*	*2011-12*
Appeals Registered	3,600	3,600
Cases disposed of	3,900	3,400
Withdrawn	2,000	1,600
Conceded	1,100	990
Decision in favour of appellant	590	560
Decision revised against appellant	90	50
Decision upheld	80	210

The latest data published is to June 2013 and data to September 2013 is due to be published on 12 December 2013. This publication will include annual data for FtT SEND for the period September 2012—August 2013.

Asked by ***Lord Touhig***

To ask Her Majesty's Government what recent assessment they have made of the percentage of appeals against statements of special educational needs made to the Health, Education and Social Care Chamber of the First-Tier Tribunal which are withdrawn prior to a hearing. [HL2272]

Lord McNally: No formal assessments have taken place regarding the percentage of appeals against statements which are withdrawn prior to a hearing.

The Ministry of Justice record and publish statistical data on the percentage of appeals which are decided, withdrawn or conceded. There are many reasons why appeals are withdrawn and it is possible for appeals to be withdrawn at the hearing as well as in advance. The table below shows data on the number of cases decided, withdrawn and conceded for the period September 2010—August 2011 and September 2011—August 2012.

	2010/2011	*2011/2012*
Decided	770 (20%)	820 (24%)
Withdrawn	2,000 (51%)	1,600 (47%)
Conceded	1,100 (29%)	990 (29%)

*Data taken from Tribunals Statistics (Quarterly) Quarter 2 2011-12

The administrative teams and the Judiciary are committed to improving performance and the user experience within the First-tier Tribunal (Special Educational Needs and Disability) and have been very proactive in identifying and tackling areas for improvement. They have worked closely with stakeholders over the last two years piloting new approaches with certain Local Authorities to improve the end to end process and reduce the amount of time involved. Parent Groups and representative organisations have been involved in this work.

Energy: Prices

Questions

Asked by ***Lord Forsyth of Drumlean***

To ask Her Majesty's Government what plans they have to increase competition in the energy sector; and what is their assessment of the impact of price controls in that sector. [HL2301]

The Parliamentary Under-Secretary of State, Department of Energy and Climate Change (Baroness Verma) (Con): Competitive markets are critical to delivering secure low carbon energy supplies in an affordable manner.

There is evidence that this Government's measures to improve competitiveness, for example by extending the exemptions for small suppliers from participation in environmental and social schemes, are already bearing fruit. In 2011 there were no independent suppliers with a customer base greater than 50,000, now there are three independents with over 100,000 customers and a further 7 new companies have entered the market during the last two years.

This Government is putting in place further measures to improve competition:

- Providing legislative backing for Ofgem's reforms to the retail markets that will ensure consumers are on the best tariff for them and have clearer, more personalised, information in order to make more informed choices

- Providing legislative backing to Ofgem's reforms to the wholesale electricity markets to improve liquidity, particularly in the forward markets

- Developing an offtaker of last resort mechanism to help independent renewable generators develop new projects

- Providing support, through EMR, for low carbon technologies in the short to medium term, working towards a long term vision of a competitive market in which technologies are able to participate on a level playing field without direct financial support.

The introduction of price controls would be likely to limit competition and, more importantly, could have a detrimental impact on the investment we need to deliver secure energy supplies.

Asked by ***Lord Taylor of Warwick***

To ask Her Majesty's Government what assessment they have made of what proportion of customers will be affected by their plans to force energy companies to offer customers the lowest tariff. [HL2540]

Baroness Verma: The Government's clauses in the Energy Bill are backstop powers to ensure that Ofgem's important reforms to the retail domestic energy market are not frustrated or delayed.

These reforms will require suppliers to limit the number of tariffs they offer to four per fuel and to move customers on poor value dead tariffs to the cheapest equivalent tariff, ensuring that all customers are on the cheapest tariff with their supplier that is in line with their preferences.

Environment: Earthworms

Question

Asked by ***The Countess of Mar***

To ask Her Majesty's Government what research to assess earthworm populations and diversity in different types of soil and under different types of management for cultivation and pest control in England has been funded by research councils since 2010. [HL2426]

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Viscount Younger of Leckie) (Con): Since 2010, the Natural Environment Research Council (NERC) has funded four research grants involving earth worms. Details of the grants are below and are also available on the NERC website at http://gotw.nerc.ac.uk.

The four applications are very different, however each sets out to inform on the impact of environmental change on the biodiversity and ecological function. The work does not explicitly inform on management for cultivation or pest control.

The Biotechnology and Biological Sciences Research Council (BBSRC) have supported three projects that each included some research into the roles of invertebrates - but not specifically earthworms - in soil processes.

NERC funded research involving earth worms

1. Lead Grant Reference: NE/F001274/1

Research Organisation: Cardiff University

Actual Start Date: 01/04/2008

Actual End Date: 31/03/2010

Project Title: Sequencing a Soil Sentinel (SeqaWorm)

2. Lead Grant Reference: NE/H009973/1

Research Organisation: Imperial College London

Actual Start Date: 01/07/2010

Actual End Date: 31/12/2013

Project Title: Distinguishing pollutant-induced stresses from spatial and temporal environmental heterogeneity - a metabolomic approach to stress ecology

3. Lead Grant Reference: NE/I026375/1

Research Organisation: Cardiff University

Actual Start Date: 01/03/2012

Actual End Date: 31/08/2015

Project Title: Stress in a hot place: Ecogenomics and phylogeography in a pantropical sentinel inhabiting multi-stressor volcanic soils

4. Lead Grant Reference: NE/K015338/1

Research Organisation: The Natural History Museum

Actual Start Date: 23/09/2013

Actual End Date: 22/09/2014

Project Title: Scaling and thresholds in earthworm abundance and diversity in grassland agricultural systems

BBSRC funded research involving roles of invertebrates in soil processes

1. Lead Grant Reference: BBS/E/C/00005740

Research Organisation: Rothamsted Research

Actual Start Date: 01/04/2008

Actual End Date: 31/03/2012

Project Title: Developing a systems-based modelling approach to understand and predict consequences of grassland soil managements for atmosphere and water environments

2. Lead Grant Reference: BBS/E/C/00004977

Research Organisation: Rothamsted Research

Actual Start Date: 01/04/2008

Actual End Date: 31/03/2012

Project Title: Mechanistic descriptions for organic matter turnover in planted soils

3. Lead Grant Reference: BBS/E/C/00005741

Research Organisation: Rothamsted Research

Actual Start Date: 01/04/2008

Actual End Date: 31/03/2012

Project Title: Understanding the role of the soil microbial and invertebrate communities in plant-soil interactions

Framework Convention for the Protection of National Minorities

Question

Asked by ***Baroness Whitaker***

To ask Her Majesty's Government when they expect to receive the opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities on the United Kingdom Third Report to the Council of Europe under that Framework Convention. [HL2530]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Stowell of Beeston) (Con): The Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its opinion on the Third Report of the United Kingdom in June 2011. The opinion, and the Government's response, can be found on the Council of Europe website at:

http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/Table_en.asp#United_Kingdom

Health: HIV/AIDS

Question

Asked by ***Baroness Scotland of Asthal***

To ask Her Majesty's Government what assessment they have made of the impact of the criminalisation of homosexuality on the prevention and treatment of HIV/AIDS. [HL2498]

Baroness Northover (LD): DFID's assessments are drawn from UNAIDS Global Reports, the latest of which reported HIV prevalence rates among men who have sex with men increasing in 2012 from already high-levels, with 76 of 193 countries still criminalizing same-sex relations. We are acutely aware of the substantial barriers that men who have sex with men face in accessing essential services for HIV prevention and treatment due to stigma and discrimination caused by punitive laws. That is why we recently announced new resources to support global and regional networks to improve HIV responses reaching key populations, including men who have sex with men.

Internet: Fraud

Question

Asked by ***Lord Birt***

To ask Her Majesty's Government what information, if any, they have about the number of prosecutions by foreign authorities mounted in 2012 of perpetrators of online fraud against United Kingdom consumers. [HL2245]

The Parliamentary Under-Secretary of State, Home Office (Lord Taylor of Holbeach) (Con): The information requested is not held centrally.

National Parks

Question

Asked by ***Baroness Whitaker***

To ask Her Majesty's Government, further to the comments by the Parliamentary Under-Secretary of State for Communities and Local Government, Nick Boles, on 11 September (HC Deb, col 304 WH), what considerations led to the Minister's suggestion that the balance between economic development and the protection of the landscape in United Kingdom national parks might not be right; and whether they intend to reduce the current level of protection for national parks. [HL2412]

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Stowell of Beeston) (Con): The National Planning Policy Framework, published in 2012, makes it clear that great weight should be given to conserving landscape and scenic beauty in national parks, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are also important considerations that should be given great weight in national parks.

A number of concerns were raised with the Parliamentary Under-Secretary for Planning, Nick Boles, during the course of the Westminster Hall debate on date 11 September, Official Report, 297WH, about national parks planning policy. Ministers are clear

that national parks have - and will continue to have - the highest status of protection in relation to landscape and scenic beauty.

Northern Ireland: Military Covenant

Question

Asked by ***Lord Empey***

To ask Her Majesty's Government what response they have received from the Northern Ireland Executive about implementing the military covenant in Northern Ireland. [HL2380]

The Parliamentary Under-Secretary of State, Ministry of Defence (Lord Astor of Hever) (Con): The Ministry of Defence (MOD) is keen to see the Armed Forces Covenant implemented as fully as possible throughout the United Kingdom. Officials from the MOD and the Northern Ireland Office continue to engage with Northern Ireland Executive departmental officials when required to ensure that the needs of Serving personnel, veterans and their families are met.

Royal Commission on Historical Manuscripts and Public Record Office

Question

Asked by ***Lord Wills***

To ask Her Majesty's Government whether they possess the terms of the agreement for the merger between the Royal Commission on Historical Manuscripts and the Public Record Office; and, if so, what they are. [HL2040]

Lord Gardiner of Kimble (Con): DCMS does not hold any records setting out the terms of agreement for the Historical Manuscripts Commission and Public Record Office organisational changes in 2003. The Royal Warrant, which is available on the National Archives website, explains that in 2003 an amendment was made with the creation of The National Archives to allow the Keeper of Public Records to become the sole Historical Manuscripts Commissioner: a role held by the Chief Executive of The National Archives.

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